

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PUGET SOUND MACHINERY DEPOT, a Corporation,

Plaintiff in Error,

vs.

JAMES C. DAVIS, Director General of Railroads of the United States, and Agent of the United States, Under the Transportation Act, 1920, Providing for the Termination of Federal Control of Railroads,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

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FILED

AUG 22 1923

F.D. MORSE



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Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Counsel.**

MESSRS. BRONSON, ROBINSON & JONES,  
Attorneys for Plaintiff in Error,  
614 Colman Building, Seattle, Washington.

GEORGE T. REID, Esq.,  
Attorney for Defendant in Error,  
909 L. C. Smith Building, Seattle, Wash-  
ington.

C. H. WINDERS, Esq.,  
Attorney for Defendant in Error,  
909 L. C. Smith Building, Seattle, Wash-  
ington. [1\*]

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In the United States District Court for the Western  
District of Washington, Northern Division.

No. 5976.

JAMES C. DAVIS, Director-General of Railroads  
of the United States, and Agent of the United  
States under the Transportation Act, 1920,  
providing for the Termination of Federal  
Control of Railroads,

Plaintiff,

vs.

PUGET SOUND MACHINERY DEPOT, a Cor-  
poration,

Defendant.

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\*Page-number appearing at foot of page of original certified Tran-  
script of Record.

**Complaint.**

Comes now the plaintiff and for cause of action against the defendant alleges:

**I.**

That the plaintiff herein is now the duly appointed, qualified, and acting Director-General of Railroads of the United States, and agent of the United States for the purpose of terminating federal control of railroads, as provided by the Transportation Act, 1920, being an act of Congress of the United States providing for the termination of federal control of railroads, and that this action is brought by the plaintiff pursuant to the terms of the act of Congress above referred to and in connection with the operation by the United States, by and through its railroad administration, of the railroad system of the Northern Pacific Railroad under acts of Congress of the United States known as the federal control acts and proclamations of the President issued pursuant thereto; and that the defendant is a corporation duly organized and existing under and by virtue of the laws of the state of Washington, maintaining offices and doing business within Seattle, King County, Washington, within [2] the Western District of Washington.

**II.**

That on the 3d day of March, 1919, there was delivered to a connecting carrier as operated by the then Director-General of Railroads, at Camden, New Jersey, by the Camden Forge Co., one car, to

wit, P. R. R. 294966, loaded with 80 flanged shaftings, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and which car was thereafter duly transported and delivered by the predecessor in office of this plaintiff, as operating the Northern Pacific Railroad, to the defendant on, to wit, the 8th day of April, 1919, and that there accrued thereon, in accordance with the duly published tariffs duly filed with the Interstate Commerce Commission of the United States, as provided by law, said shipment moving in interstate commerce, charges in the sum of Two Thousand and Twenty-eight and 35/100 Dollars (\$2,028.35), plus war tax in the sum of Twenty-five and 60/100 Dollars (\$25.60), on account of which there was paid by the defendant the sum of One Thousand, One Hundred and Seventy-five and 15/100 Dollars (\$1,175.15) leaving a balance owing of Eight Hundred and Seventy-eight and 80/100 Dollars (\$878.80).

That thereafter and on the 10th day of March, 1919, there was delivered at Camden, New Jersey, by the same consignor, a second car loaded with 21 uniform forgings flanged shaftings, loaded in car P. R. R. 294476, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and that said shipment was by the predecessor in office of this plaintiff, the then Director-General of Railroads, operating the Northern Pacific Railroad, delivered to the defendant at Seattle on, to wit, the 5th day of April, 1919; that under the tariffs duly filed with the Interstate Commerce

Commission [3] as aforesaid, there accrued thereon freight charges in the sum of Two Thousand, Four Hundred and Twenty-two and 50/100 Dollars (\$2,422.50), plus war tax in the sum of Thirty and 60/100 Dollars (\$30.60), and that there was paid on account thereof to the predecessor in office of this plaintiff the sum of One Thousand, Four Hundred and Two and 50/100 Dollars (\$1,402.50), leaving a balance due and owing of One Thousand and Fifty and 60/100 (\$1,050.60).

That thereafter and on the 22d day of March, 1919, a third car was consigned from Camden, New Jersey, to the defendant at Seattle, Washington, being car N. Y. C. 347714, purporting to be loaded with 51 flanged shaftings, and that said shipment was thereafter transported from Camden, New Jersey, to Seattle, Washington, and delivered by the predecessor in office of this plaintiff as operating the Northern Pacific Railroad, to the defendant at Seattle on the 25th day of April, 1919; that there accrued on account of transportation charges thereon, under the tariffs duly filed with the Interstate Commerce Commission as aforesaid, the same being transported in interstate commerce by the predecessor in office of this plaintiff and connecting carriers, the full sum of Two Thousand, Eight Hundred and Four and 88/100 Dollars (\$2,804.88) with war tax in the sum of Thirty-five and 43/100 Dollars (\$35.43), on account of which there was paid by the defendant to the predecessor in office of this plaintiff the sum of One Thousand, Six Hundred and Twenty-three and 88/100 Dol-

lars (\$1,623.88), leaving a balance due and owing in accordance with the duly published tariff charges governing the transportation of said car of One Thousand, Two Hundred and Sixteen and 43/100 Dollars (\$1,216.43).

That thereafter and on the 9th day of April, 1919, there [4] was delivered to the Director-General of Railroads at Camden, New Jersey, a fourth car, purporting to contain 31 flanged shaftings and 11 forgings, the same being loaded in B. & A. car 10229, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and which car was thereafter transported from Camden, New Jersey, to Seattle, Washington, and delivered by the predecessor in office of this plaintiff, Director-General of Railroads, as operating the Northern Pacific Railroad, to the defendant on, to wit, the 12th day of May, 1919, and that there accrued thereon, in accordance with the lawfully published tariffs and classifications under which said shipment moved and as duly filed with the Interstate Commerce Commission as provided by statute, said shipment moving in interstate commerce, charges in the sum of One Thousand, Eight Hundred and Ninety-four and 30/100 Dollars (\$1,894.30) with war tax in the sum of Twenty-three and 93/100 Dollars (\$23.93), on account of which there was paid to the predecessor in office of this plaintiff the sum of One Thousand and Ninety-six and 70/100 Dollars (\$1,096.70), leaving a balance due and owing of Eight Hundred and Twenty-one and 53/100 Dollars (\$821.53).

### III.

That the charges as set forth in the preceding paragraph and covering the transportation of the four cars therein referred to were assessed in accordance with the duly filed and published tariffs and classifications governing the transportation of each of said cars from Camden, New Jersey, to Seattle, Washington, as shown by such tariffs and classifications as duly filed with the Interstate Commerce Commission of the United States and then in effect.

### IV.

That due demand has been made upon the defendant for the payment of the balance owing on account of the transportation [5] charges accruing on each of said four cars, and that the defendant has wholly failed and refused to pay the same or any part thereof, and that there is now due and owing to this plaintiff, as the successor in office of the Director-General of Railroads then operating the Northern Pacific Railroad, freight charges covering the transportation of P. R. R. car 294966, as above referred to, in the full sum of Eight Hundred and Seventy-eight and 80/100 Dollars (\$878.80), with interest at the legal rate from the 8th day of April, 1919; on account of transportation of P. R. R. car 294476 freight charges in the full sum of One Thousand and Fifty and 60/100 Dollars (\$1,050.60), with interest from the 5th day of April, 1919; on account of transportation of N. Y. C. car 347714 charges in the full sum of One Thousand, Two Hundred and Sixteen and 43/100 Dollars (\$1,216.43), with interest from the 25th day of

April, 1919, until paid; and on account of transportation of B. & A. car 10229 the full sum of Eight Hundred and Twenty-one and 53/100 Dollars (\$821.53), with interest from the 12th day of May, 1919, at the legal rate.

WHEREFORE, plaintiff prays that he may have judgment against the defendant as follows:

(1) On account of freight charges owing on account of the transportation of P. R. R. car 294966 referred to in the foregoing complaint in the sum of Eight Hundred and Seventy-eight and 80/100 Dollars (\$878.80), with interest thereon from the 8th day of April, 1919, until paid;

(2) On account of the transportation of P.R. R. car 294476 in the full sum of One Thousand and Fifty and 60/100 Dollars (\$1,050.60) with interest at the legal rate from the 5th day of April, 1919, until paid;

(3) On account of the transportation of N. Y. C. car 347714 [6] in the full sum of One Thousand, Two Hundred and Sixteen and 43/100 Dollars (\$1,216.43), with interest thereon at the legal rate from the 25th day of April, 1919, until paid;

(4) On account of the transportation of B. & A. car 10229 above referred to the full sum of Eight Hundred and Twenty-one and 53/100 Dollars (\$821.53), with interest thereon at the legal rate from the 12th day of May, 1919, until paid;

(5) That the plaintiff further have and recover of and from the defendant his costs and disbursements herein to be taxed, and that he have such other and further relief as to the court may seem

meet and equitable and consistent with the proofs upon a hearing hereof.

C. H. WINDERS,  
Attorney for plaintiff.

State of Washington,  
County of King,—ss.

C. H. Winders, being first duly sworn, on oath deposes and says:

That he is attorney for the plaintiff; that said plaintiff is a nonresident of the state of Washington, and that he makes this verification for and on his behalf, being duly authorized so to do; that he has caused the foregoing complaint to be prepared, knows the contents thereof, and believes the matters and things therein set forth are true.

C. H. WINDERS.

Subscribed and sworn to before me this 3d day of May, 1921.

[Notary Seal]                   ARTHUR E. SIMON,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 3, 1921. F. M. Harshberger, Clerk.  
By S. E. Leitch, Deputy. [7]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 5976.

JAMES C. DAVIS, Director-General of Railroads of the United States and Agent of the United States under the Transportation Act, 1920, Providing for the Termination of Federal Control of Railroads,

Plaintiff,

vs.

PUGET SOUND MACHINERY DEPOT, a Corporation,

Defendant.

**Answer.**

Comes now the defendant, and answering the complaint of the plaintiff herein, admits, denies and alleges as follows:

I.

Answering paragraph I, admits the allegations therein contained.

II.

Answering paragraph II, admits that shipments of shafting were made to the defendant from Camden, New Jersey, as alleged in said paragraph, and further admits that it paid as freight and war tax the respective sums alleged to have been paid, but denies that the other and greater sums alleged to have become due with respect to said shipments

and each of them, ever became due and owing in accordance with the duly published tariff charges governing the transportation of the four cars of shafting, or that any sum greater than alleged to have been paid became due with respect to any one of the four cars mentioned in said paragraph.

### III.

Answering paragraph III, defendant denies the charges set forth in paragraph II, covering the transportation of the four cars therein referred to were assessed in accordance with the duly filed [8] and published tariffs governing the transportation in question.

### IV.

Answering paragraph IV, defendant admits that demand has been made for the various sums therein set out, and that it has refused and still refuses to pay the same, and has denied and now denies that they, or any part thereof, are due to the plaintiff.

WHEREFORE, having fully answered, defendant prays to be hence dismissed, and have judgment for its costs.

BRONSON, ROBINSON & JONES,  
Attorneys for Defendant.

State of Washington,  
County of King,—ss.

E. I. Garrett, being first duly sworn, on oath deposes and says: that he is the president of Puget Sound Machinery Depot, a corporation, defendant in the above-entitled action; that he has read the

foregoing answer, knows the contents thereof, and believes the same to be true and correct.

E. I. GARRETT.

Subscribed and sworn to before me this 9 day of November, 1922.

W. L. GRILL,

Notary Public in and for the State of Washington,  
Residing at Seattle.

Due service of a copy hereof admitted this 10  
day of Nov. 192—.

C. H. WINDERS.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 13, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

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[Title of Court and Cause.]

**Stipulation Waiving Jury Trial.**

It is mutually stipulated and agreed by and between the attorneys for both parties that a jury in this case be and it is hereby expressly waived, and each of the parties hereby agree that the issues in this case may be tried before the above-entitled Court and the Judge thereof without the intervention of a jury.

Dated the 10th day of January, 1923.

GEO. T. REID,

C. H. WINDERS,

Attorneys for Plaintiff.

BRONSON, ROBINSON & JONES,

Attorneys for Defendant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 10, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

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[Title of Court and Cause.]

**Findings of Fact and Conclusions of Law.**

BE IT REMEMBERED that this cause came on duly and regularly for trial on the 10th day of January, 1923, upon the complaint of the plaintiff and the answer thereto of the defendant, each of the parties in writing prior to trial waiving a trial of the issues involved by a jury and consenting and stipulating that the cause should be tried before the Honorable E. E. Cushman, United States District Judge presiding in the above-entitled court, such stipulation being in writing and duly filed herein, and the trial of said cause proceeding before the Court without a jury, and the plaintiff having introduced his evidence and rested, and the defendant having introduced its evidence and rested, and the plaintiff having introduced his evidence in rebuttal, and both parties having rested, and the matter being duly presented to the court by argument of the attorneys for the respective parties, and the court having on the 15th day of January, 1923, after such arguments, announced its findings [11] in favor of the plaintiff for the amount as prayed for in his complaint, the Court now makes the following

## FINDINGS OF FACT.

## I.

That the plaintiff herein was at the time of the institution of this action and at all times since has been and is now the duly appointed, qualified, and acting Director-General of Railroads of the United States and agent of the United States for the purpose of terminating federal control of railroads, as provided by the Transportation Act, 1920, being an act of Congress of the United States providing for the termination of federal control of railroads, and that this action was brought and is maintained by the plaintiff pursuant to the terms of the act of Congress referred to and in connection with the operation by the United States, by and through the railroad administration, of the railroad system of the Northern Pacific Railroad under acts of Congress of the United States known as the federal control acts and proclamations of the President issued pursuant thereto; and that the defendant is a corporation duly organized and existing under and by virtue of the laws of the state of Washington, maintaining offices and doing business within Seattle, King County, Washington, within the western district of Washington.

## II.

That on the 3d day of March, 1919, there was delivered to a connecting carrier as operated by the then Director-General of Railroads, at Camden, New Jersey, by the Camden Forge Co., one car, to wit, P. R. R. 294966, loaded [12] with 80 flanged shafts, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and

which car was thereafter duly transported and delivered by the predecessor in office of the plaintiff, as operating the Northern Pacific Railroad, to the defendant on the 8th day of April, 1919, and the Court finds that there accrued thereon in accordance with the duly published classifications and tariffs duly filed with the Interstate Commerce Commission of the United States, as provided by law, said shipment moving in interstate commerce, charges in the sum of Two Thousand and Twenty-eight and 35/100 Dollars (\$2,028.35), plus war tax in the sum of Twenty-five and 60/100 Dollars (\$25.60), on account of which there was paid by the defendant the sum of One Thousand, One Hundred and Seventy-five and 15/100 Dollars (\$1,175.15), leaving a balance owing of Eight Hundred and Seventy-eight and 80/100 Dollars (\$878.80).

### III.

The Court finds that on the 10th day of March, 1919, there was delivered at Camden, New Jersey, by the same consignor, a second car, loaded with 21 flanged shafts, loaded in car P. R. R. 294476, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and that said shipment was by the predecessor in office of the plaintiff, the then Director-General of Railroads, operating the Northern Pacific Railroad, delivered to the defendant at Seattle, Washington, on the 5th day of April, 1919; that under the classifications and tariffs duly filed with the Interstate Commerce Commission, as aforesaid, there accrued [13] thereon freight charges in the sum of Two Thousand, Four

Hundred and Twenty-two and 50/100 Dollars (\$2,422.50), plus war tax in the sum of Thirty and 60/100 Dollars (\$30.60), and that there was paid on account thereof to the predecessor in office of the plaintiff the sum of One Thousand, Four Hundred and Two and 50/100 Dollars (\$1,402.50), leaving a balance due and owing of One Thousand and Fifty and 60/100 Dollars (\$1,050.60).

#### IV.

That on the 22d day of March, 1919, a third car, loaded with 51 flanged shafts, was consigned from Camden, New Jersey, by the same consignor, to the defendant at Seattle, Washington, being car N. Y. C. 347714, whch car the Court finds was transported from Camden, New Jersey, in regular course and delivered to the defendant at Seattle, Washington, on the 25th day of April, 1919, the same being transported and delivered by the United States Railroad Administration, as operating the Northern Pacific Railroad, and that there accrued on account of such transportation charges under the duly filed and published tariffs and classifications as filed with the Interstate Commerce Commission, as set forth in the preceding findings, the full sum of Two Thousand, Eight Hundred and Four and 88/100 Dollars (\$2,804.88), with war tax in the sum of Thirty-five and 43/100 Dollars (\$35.43), on account of which there was paid by the defendant to the predecessor in office of the plaintiff the sum of One Thousand, Six Hundred and Twenty-three and 88/100 Dollars (\$1,623.88), leaving a balance due and owing, in accordance with the duly published classifications

and tariffs governing the transportation of such car, of [14] One Thousand, Two Hundred and Sixteen and 43/100 Dollars (\$1,216.43).

#### V.

That on the 9th day of April, 1919, there was delivered to the then Director General of Railroads at Camden, New Jersey, a fourth car, containing flanged and other shafts, the same being loaded in B. & A. car 10229, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and which car the Court finds was thereafter duly transported by the United States Railroad Administration, operating the Northern Pacific Railroad, from Camden, New Jersey, to Seattle, Washington, where delivery was made to the defendant on the 12th day of May, 1919, and the Court finds that there accrued thereon, in accordance with the lawfully published classifications and tariffs, duly filed as provided by statute, freight charges in the sum of One Thousand, Eight Hundred and Ninety-four and 30/100 Dollars (\$1,894.30), with war tax in the sum of Twenty-three and 93/100 Dollars (\$23.93), on account of which the Court finds there was paid to the predecessor in office of the plaintiff by the defendant the sum of One Thousand and Ninety-six and 70/100 Dollars (\$1,096.70), leaving a balance due and owing of Eight Hundred and Twenty-one and 53/100 (\$821.53).

#### VI.

The Court finds that the charges as set forth in the four preceding findings of fact, and covering the

transportation of the four cars therein referred to, were assessed in accordance with the duly filed and published [15] classifications and tariffs governing the transportation of each of said cars from Camden, New Jersey, to Seattle, Washington, as shown by the tariffs and classifications as duly filed with the Interstate Commerce Commission and then in effect; that said shipments consisted of flanged shafts roughly machine turned, and were properly classified as shafts or shafting, iron or steel, other than crank shafts, without cams, couplings or fittings, and not key-leaved nor key-seated, as shown by items 4, 7, and 9, page 301, of Western Classification No. 55, which was in effect at the time of the movement of said cars, and that such shafts, pursuant to such classifications, were covered by Transcontinental Freight Bureau West-bound Tariff No. 4-O, I. C. C. No. 1049 of R. H. Countiss, Agent, with supplements thereto, the court finding that said shipments were covered by the fifth class rate as designated in said classification, which, at the time of said movements, was \$2.37½ per hundred pounds, the Court finding that the classification as made by the Transcontinental Freight Bureau upon the arrival of said shipments at Seattle so classifying said shipments was a correct classification to be made thereof.

## VII.

The Court further finds that repeated demands were made by the plaintiff and his predecessor in office for the payment of the balance of the freight charges accruing on said four cars, and that the de-

fendant prior to the institution of this action and at all times since has failed and refused to pay the same or any part thereof, and that there is now due and owing to the plaintiff from the defendant the [16] full sum of three thousand, nine hundred and sixty-seven and 36/100 Dollars (\$3,967.36), with interest on the unpaid balances from the date of delivery as set forth in the preceding findings.

Done in open court this 30th day of January, 1923.

EDWARD E. CUSHMAN,  
Judge.

From the foregoing findings of fact the Court draws the following

#### CONCLUSION OF LAW.

That the plaintiff is entitled to judgment against the defendant in the sum of Three Thousand Nine Hundred and Sixty-seven and 36/100 Dollars (\$3,967.36); with interest on the sum of Eight Hundred and Seventy-eight and 80/100 Dollars (\$878.80) at the rate of six per cent per annum from the 8th day of April, 1919, until paid; with interest on the sum of One Thousand and Fifty and 60/100 Dollars (\$1,050.60) at the rate of six per cent per annum from the 5th day of April, 1919, until paid; with interest on the sum of One Thousand Two Hundred and Sixteen and 43/100 Dollars (\$1,216.43) at the rate of six per cent per annum from the 25th day of April, 1919, until paid; and with interest on the sum of Eight Hundred and Twenty-one and 53/100 Dollars (\$821.53), at the rate of six per cent per annum from the 12th day of May, 1919, until paid,

together with its costs and disbursements herein to be taxed.

Done in open court this 30th day of January, 1923.

EDWARD E. CUSHMAN,

Judge. [17]

Due service of a copy hereof admitted this 18 day of Jan., 1923.

BRONSON, ROBINSON & JONES,  
Attorneys for Def.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

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In the District Court of the United States for the Western District of Washington, Northern Division.

No. 5976.

JAMES C. DAVIS, Director-General of Railroads of the United States, an Agent of the United States Under the Transportation Act, 1920, Providing for the Termination of Federal Control of Railroads,

Plaintiff,

vs.

PUGET SOUND MACHINERY DEPOT, a Corporation,

Defendant.

**Judgment.**

BE IT REMEMBERED that this cause came on duly and regularly for trial on the 10th day of January, 1923, upon the complaint of the plaintiff and the answer of the defendant, each of the parties filing a written stipulation prior to trial expressly waiving a trial of the questions of fact by a jury and expressly stating that the case might be tried before the Honorable E. E. Cushman, United States District Judge presiding in the above-entitled court, and pursuant to such stipulation the trial of said cause proceeded before said judge without a jury; and the plaintiff having introduced his evidence and having rested, and the defendant having introduced its evidence and having rested, and the plaintiff having introduced his evidence in rebuttal, and both parties having rested, and after argument by the respective counsel, the matter being duly submitted to the Court for determination and decision, the Court on the 15th day of January, 1923, announced its findings in favor of [19] the plaintiff, that he recover of and from the defendant the full amount sued for in his complaint; and the Court having caused findings of fact and conclusions of law to be reduced to writing and filed and entered herein;

NOW THEN, upon motion of the plaintiff for judgment in accordance with the findings of the Court and the findings of fact and conclusions of law heretofore entered herein, it is now by the Court

ordered, adjudged, and decreed that the plaintiff do have and recover of and from the defendant the full sum of Four Thousand, Eight Hundred Sixty-one and 69/100 dollars (\$4,861.69), together with his costs and disbursements herein to be taxed; to all of which the defendant excepts and an exception is allowed.

Done in open court this 30th day of January, 1923.

EDWARD E. CUSHMAN,  
Judge.

Due service of copy hereof admitted this 18th day of Jan., 1923.

BRONSON, ROBINSON & JONES,  
Attorneys for Def.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 30, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

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[Title of Court and cause.]

**Order Extending Time to and Including March 1, 1923, to File Bill of Exceptions.**

It is hereby ordered that the time for filing proposed bill of exceptions in the above-entitled case is hereby extended to the first day of March, 1923.

Dated at Seattle, Washington, this 9th day of February, 1923.

EDWARD E. CUSHMAN,  
Judge.

O. K.—C. H. WINDERS.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 9, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

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[Title of Court and Cause.]

**Notice of Application to have Bill of Exceptions Certified.**

To James C. Davis, Director-General of Railroads of the United States, and Agent of the United States under the Transportation Act, 1920, providing for the termination of Federal control of Railroads, plaintiff in the above-entitled cause, and to Chas. H. Winders, Esq., his attorney:

You, and each of you, will please take notice that on Monday, the 19th day of March, 1923, the defendant in the above-entitled cause, by its attorneys, Ira Bronson, J. S. Robinson and H. B. Jones, will apply to the above-entitled Court to have certified the bill of exceptions heretofore prepared and proposed by the defendant in the above-entitled cause.

IRA BRONSON,  
J. S. ROBINSON,  
H. B. JONES,

Attorneys for Defendant.

Due service of a copy hereof admitted this 7th day of March, 1923.

C. H. WINDERS,  
(J.)

Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 7, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

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[Title of Court and Cause.]

**Bill of Exceptions.**

This cause coming on regularly for hearing on this 10th day of January, 1923, before the Hon. Edward E. Cushman, Judge of the above-entitled court, the trial being before the court, the parties having waived a jury, and the plaintiff appearing by his attorney of record, Charles H. Winders, Esq., and the defendant appearing by its attorney, Ira Bronson, Esq., of the firm of Bronson, Robinson & Jones, the following proceedings were had and testimony taken, to wit:

Herewith follows a transcript of all the testimony given at the trial, the same being set forth in full to enable the appellate court to determine the correctness of the Trial Court's ruling in refusing to make and find certain findings of fact and conclusions of law proposed by the defendant, and in making and entering findings of fact, conclusions of law and judgment in favor of the plaintiff. [23]

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**Testimony of A. B. Cade, for Plaintiff.**

A. B. CADE, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. WINDERS.) State your full name.

A. A. B. Cade.

Q. And what is your employment?

A. Superintendent, Transcontinental Freight Bureau, Weighing & Inspection Department, North Pacific Coast Territory; headquarters, Seattle, Washington.

Q. Were you occupying that position in the year 1919 at the time the four cars in controversy in this case moved and were delivered? A. I was.

Q. Located at Seattle? A. At Seattle.

Q. How long have you been connected with that department and familiar with similar work?

Q. Approximately, 39 years.

Q. What is the Transcontinental Freight Bureau; what is its work?

A. You mean the Weighing & Inspection Department?

Mr. BRONSON.—I don't think that has anything to do with it; what we want to do is to establish the character of this commodity. I will admit that Mr. Cade's connection is such as to enable him to describe the material.

The COURT.—The objection is overruled.

A. The Weighing & Inspection Department of the Transcontinental Freight Bureau is established

(Testimony of A. B. Cade.)

in the interest of both carriers and shippers alike, to see that goods are properly [25—4] described so that the proper rates may be applied by carriers, and we employ inspectors at the terminal stations for that purpose, whose duty is to examine freight received, both carload and less than carload, to see that they are properly described under the provisions of established tariffs, and if they are not properly described under the provisions of established tariffs it is their duty to so describe them.

Q. Does this inspection bureau cover all of the railroads in the Northwest?

A. It does; that is all of the transcontinental lines and many of the smaller lines.

Q. Have you the record of inspection of these cars?

A. I have the inspector's record. The inspector who examined these particular shipments died recently, so we have not the inspector with us who personally examined those shipments.

Mr. BRONSON.—We are perfectly willing that they should introduce these records of ours.

Q. Mr. Cade, in reference to these shipments that are involved in this case and covered by these four cars—you are familiar with shipments of the character that were moved during that period and particularly during the war period—shafts of those various kinds?

A. I am. (Examining blue-print.) These as illustrated by the blue-prints before me are forged

(Testimony of A. B. Cade.)

shafts equipped with flanges, having a flange at either end.

Mr. BRONSON.—I would like to submit to your Honor my view of the competency of Mr. Cade's evidence, because it is largely determinative of the case. We [26—5] have no objection to Mr. Cade's testimony to the physical characteristics or a minute description of the material in these four carloads, in fact, we will agree with Mr. Winders and let the Court have the plan and it shows what it is, but we do contend, if your Honor please, that Mr. Cade is not competent to testify as to whether this material is within the classification in this freight rate—that is what we want your Honor to decide is as to what it is in the language of the freight rate. Now, I have an idea from the way he starts out here that he is going to define this in the line of the description within the terms of this Transcontinental Freight Rate, and that is the question for your Honor to decide.

The COURT.—It is only natural with a man more or less familiar with these things that expressions will creep into his testimony in which he characterizes the subject matter of this freight, this shipment, using the expression "Flange" or any other descriptions, but I do not see that that renders his testimony incompetent. The question still would be for decision, if the Court was able to decide it. It does seem to me, from the way you start out that it is, instead of being purely a question of law that it is a question of proper classifica-

(Testimony of A. B. Cade.)

tion which requires technical knowledge of the shipment.

Mr. BRONSON.—I do not think, if your Honor please, when the evidence is in, if Mr. Winders will read his classifications to the Court in the beginning, that [27—6] there will be any question except the question of law.

Mr. WINDERS.—Of course, if your Honor please, it is a question of expert testimony here as to what these statements consisted of. There is a provision of the tariff from which it might be contended as I understand it that these were forgings or some kind of shafting, as Mr. Bronson says. It is our contention that they come under the provisions of the classification of shafts and shaftings not key-leaved nor key-seated, loose or in packages, as provided for in this tariff.

The COURT.—Key-seated there means they became a part of the machine.

Mr. WINDERS.—Yes. Not key-leaved nor key-seated; and if they were they would take the class "A" rate.

The COURT.—You may proceed. The objection is overruled.

Mr. WINDERS.—I think first I will offer in evidence at this time—and they can be withdrawn if you desire—the specifications and drawings of the material that was on these four cars, as produced by the defendant.

Mr. BRONSON.—We have no objection, but the drawings include more.

(Testimony of A. B. Cade.)

The COURT.—They may be admitted.

(Received in evidence and marked, respectively, as follows: Blue-prints marked Plaintiff's Exhibits Nos. 1, 2, and 3 and specifications marked Plaintiff's Exhibit No. 4.)

Q. Referring to Plaintiff's Exhibit No. 4 and, in connection therewith, Exhibits Nos. 1, 2 and 3, which counsel on behalf of defendant has produced as covering the specifications [28—7] by Exhibit No. 4, and by Exhibits Nos. 1, 2 and 3 the plans of the commodity on these four cars, I will ask you whether you have examined them.

A. The material?

Q. The plans and specifications. A. I have.

Q. Do those plans and those specifications correspond with the classifications as made by your department at the time this shipment arrived?

A. They do.

Mr. BRONSON.—That is the exact question which the Court should decide. This witness could not bind us and I do not think his evidence is competent—I do not think his opinion is any value in enabling your Honor to define what that rate means. He says it is a certain classification, and it is incompetent.

The COURT.—I do not see how a Court is going to determine a technical matter of this kind without the opinion of somebody who knows more about it than the Court does.

Mr. BRONSON.—I want to point out the ground of my objection. Here is the definition in the rate

(Testimony of A. B. Cade.)

which was in force at the time, "Shafting plain (See Note 1)." Note 1 "Carload rates apply only on plain shafting without connections."

Now, this material in controversy here is a piece of metal 24 feet long and so many inches in diameter. It is flanged on one end which is made part of it when it is made, and perhaps on the other end, and that is all there is to it. Now, the question is [29—8] is that "Plain shafting without connections" or under "Forgings, not further finished than being drilled with bolt holes." Now, those two paragraphs cover this case and we will describe the material to you exactly.

The COURT.—I can understand and go to the extent that we are looking at an object such as you have described there, without the Court knowing the other forms that the machines might take, that the Court might conclude that it was a shaft as it stood alone under that definition; but if an expert can point out the gradations and the way that one piece of a machine and the description of it fits into another until you reached a place eventually where one description ceases to be proper and another description becomes applicable, why the Court would be groping around more or less unless experts were put on the stand to give their opinion and to point out the differences and what would create the differences, and it may be that I will disregard those, because it is just a bald expression of opinion without giving the Court anything

(Testimony of A. B. Cade.)

really, but I cannot decide the case without hearing testimony.

Mr. BRONSON.—So as to get the record in proper shape, will your Honor allow me, then, to interpose the further objection that Mr. Cade is not competent as a mechanic or expert?

The COURT.—Evidently he knows more about it than the Court does in a general way—the objection is overruled. [30—9]

Q. (Mr. WINDERS.) Do these blue-print drawings and plans as now presented by the defendant cover the material involved in this shipment?

A. That is my understanding. But may I proceed in my own way? Q. Yes.

The COURT.—Now, I understand the effect of that is that these plans and specifications show what was actually shipped?

Mr. WINDERS.—Yes.

A. They speak for themselves. The material as originally shipped from Camden, New Jersey, was described by shippers as so many pieces of rough forgings. Upon arrival at Seattle they were inspected by an inspector in my employ who, after an inspection of the material described them as rough-turned shafts, and, under a ruling received from the Western Classification Committee he also, in parentheses, described them as machinery, indicating that the machinery carload rate was applicable. The material as indicated by blue-print and specifications shows the shipment or shipments to have consisted of what is termed rough-machined

(Testimony of A. B. Cade.)

line shafts with flanges which are used as a coupling in connecting the lines. Those flanges—this material is further finished than is provided for in the commodity tariffs which do provide a rating on forgings not further finished than being drilled with bolt holes.

These particular shafts have been placed through a lathe and rough turned to within somewhere, I should say, within  $\frac{1}{8}$  of an inch of their final finished dimension.

Under the conditions in which these particular shipments moved the provision in our transcontinental west-bound [31—10] commodity tariffs for forgings not further finished than bored with bolt holes, would not be applicable as they are specific provision and cover articles specified only, and would not apply upon an analogous article.

We also carry in our westbound commodity tariffs a provision for plain shafting, and it is the understanding of myself and the traffic officials in the interested north coast lines—

Mr. BRONSON.—(Interposing.) It is understood that we have an objection to all of this as irrelevant, immaterial and incompetent.

The COURT.—Yes.

A. (Continuing.) The understanding of the chairman of the Western Classification Committee that this type of shafting is not what is known to the trade in general as plain shafting; plain shafting being a round bar polished, sometimes cold-drawn, as they term it, through a die, which is used in

(Testimony of A. B. Cade.)

transmission machinery where they run a line of shafting from one end of a building to another. That is a straight bar of steel similar to my pencil (illustrating), excepting various dimensions, without any coupling or any flange or any shoulders like that (illustrating). That is what is termed plain shafting.

If this shafting is equipped with an extending flange, shoulders or projections of any kind, it ceases to be what is termed plain shafting in the classification sense.

Western Classification 55 was in effect at the time these particular shipments moved, and we referred the question, with an illustration of the character of the material, to the Western Classification Committee of Chicago, [32—11] and I received from them a letter under date of August 8, 1919, which says: "Referring to yours of August 4th"—

Mr. BRONSON—We object to this, of course, on the further ground that it is mere hearsay.

Mr. WINDERS.—I do not think I will insist on that letter.

Q. Now, Mr. Cade, have you with you the classification and tariff which were in effect at the time these shipments moved?

A. I have (producing book).

Q. I wish you would please give the reporter by number and date effective and Interstate Commerce number, the classification which was in effect at the time this shipment moved.

A. Western Classification—

(Testimony of A. B. Cade.)

Q. Yes.

A. Western Classification No. 55, I. C. C. No. 13. It became effective April 1, 1918, and was in effect until December 29, 1919.

Mr. BRONSON.—Is that this “No. 4-O” here, this other book?

The WITNESS.—No. This is Western Classification No. 55. I will give you the Bureau tariff number.

Mr. WINDERS.—“4-O” is the tariff—this is the classification.

Q. That was the classification that was duly filed and in effect at the time with the Commission?

A. It was.

Q. Turn to that Classification and advise the Court what, in your opinion, was the classification that this material [33—12] as shown by the blue-prints and specifications introduced in evidence here, would come under—what page and what items?

A. On page 301, Western Classification No. 55, Items 4 and 9.

Item 4 reads as follows: “Shafts or shafting, iron or steel, other than crank shafts”: That is a sub-caption to a general head covered at the top of the page for “Machinery and machines.”

Item 9, it is covered under sub-caption shown by Items 4, 7 and 9. Item 7 reads “Without cams, couplings or fittings.”

Item 9 says “Not key-leaved nor key-seated;

(Testimony of A. B. Cade.)

loose or in packages, carload, minimum weight 63,000 pounds, class 5th."

That is the item and classification that we understand to be applicable on the shipments in question.

Q. Now, Mr. Cade, I will offer in evidence this Western Classification. Have you the tariff that was in effect and the supplements thereto at the time these four cars moved? A. I have.

Q. For the purpose of the record will you state the number of that tariff, when published and the I. C. C. number and also the date effective?

A. Transcontinental Freight Bureau Westbound Tariff No. 4-O, became effective March 15, 1918; I. C. C. No. 1049 of R. H. Countess, Agent, and this tariff was in effect during 1919. I have not with me the effective date.

Q. Was there a supplement to that tariff?

A. There are many supplements. [34—13]

Mr. BRONSON.—You mean the one increasing it 25%?

Mr. WINDERS.—Yes.

Mr. BRONSON.—I will admit that.

Q. Will you refer now, Mr. Cade, to the page, and give the Court the page of this original tariff No. 4-O which carries the rate on commodities classified as you have just testified you classified these shipments?

A. The rates governed by the provisions of Western Classification 55 are as shown on page 151, Index No. 1.

Q. The grouping there shown on that page in

(Testimony of A. B. Cade.)

that item covers the charges for the territory from Camden, New Jersey, to Seattle, Washington.

Mr. BRONSON.—The record may show that we will admit that the classification as to tariff is correct and that there was a 25% increase flat on all the rates applied by supplemental tariffs which you have not got here.

Mr. WINDERS.—I have it here. These tariffs are rather complex, but I want to show this:

It is agreed that the tariff No. 4-O on 5th-class commodities such as Mr. Cade has classified these shipments, was \$1.90 per hundred pounds; that prior to the movement of this shipment there had been a supplement to this tariff published adding 25%, so that the effective rate at the time this shipment moved, in accordance with the classification Mr. Cade has testified to, was \$2.37½.

Mr. BRONSON.—Yes; that is right, if his classification is correct.

Q. What is the purpose of the classification and of the tariff— [35—14] that is, in the tariff you will find some articles specifically defined and others you do not.

A. The classification names the ratings, generally speaking, on all freights moving within the scope of the territory governed by it, and in the absence of any specific commodity rate, so-called, the class rates govern. Commodity tariffs are exceptions to the provisions of Western Classifications and take precedence over them when the rates are less. Commodity rates are made to take care

(Testimony of A. B. Cade.)

of trade conditions, heavy body of movement and so forth.

Q. In other words, the movement of the great bulk of the commodities is governed by the classification which names a classified rate, which you would turn to the tariff to find; such as Class "A" and "B" and 5th class? A. Yes.

Mr. BRONSON.—I don't think that is material.

The COURT.—I don't think it is.

Q. Now, Mr. Cade, you have testified that these four cars came in billed as rough forgings and that your department changed the transportation.

A. Description.

Q. I think for the purpose of this record I will ask you to turn to the provisions of the tariff covering rough forgings.

Mr. BRONSON.—You mean "4-O"?

A. Transcontinental Freight Bureau Westbound Tariff 4-O, on page 296, Item 3540, under the caption of "Iron and steel, articles of," shown on the top of the page, is shown "Forgings, N. O. S., not further finished than being drilled with bolt holes, minimum carload rate 50,000 pounds; carload [36—15] rate from group 'A' territory to Seattle \$1.10 per one hundred pounds," that being increased by 25% under supplement which would be applicable on that type of material at the time shipment moved.

The term "N.O.S." used in this item means "Not otherwise specified in this tariff."

(Testimony of A. B. Cade.)

Q. Now, Mr. BRONSON has also referred to a provision in that same tariff covering shafting. I think I will offer that provision in evidence.

A. On page 293, tariff referred to, Item 3450, said item being carried under the caption of "Iron and steel, articles of," there is a provision for shafting, plain (See Note 1), minimum carload weight 80,000 pounds, subject to Note 3, from Camden, New Jersey, to Seattle, Washington, of \$1.10 per one hundred pounds, plus the 25% increase referred to.

Mr. BRONSON.—We admit that also—that there is 25¢ added. Will you read the notes, too?

The WITNESS.—Note 3?

Mr. BRONSON.—Note 1.

The WITNESS.—Note 1, "Carload rates apply only on plain shafting without connections." Note 3. On shipments containing articles which, on account of length, require two or more cars to transport them, the minimum charge at the carload rate for each series or lot, not to exceed three cars in any one lot or series, shall be as follows: which case refer to minimums which would not be applicable on this, because these are single shipments.

Q. (Mr. WINDERS.) Well, the specifications are in evidence. Were these various articles which are in controversy here [37—16] flanged at either end?

A. These shafts in these shipments were flanged at one end or both ends from the description as shown in the inspector's record and from the de-

(Testimony of A. B. Cade.)

scription shown on the blue-prints and specifications submitted by the defendant.

Q. Where is that flanged other than at the end?

A. Just at the end.

The COURT.—Did they carry bolt holes in those flanges?

The WITNESS.—They were not bored. The only machine work done on them was turning them in the lathe, dressing them down to the  $\frac{1}{8}$  inch.

The COURT.—Where would you understand would be bolt holes in the shafts except through the flanges?

The WITNESS.—That is the only place, but they were not bored in this instance—the boring being done here.

Mr. WINDERS.—If they are bored they would take the class “A” rather than the 5th class rate.

The COURT.—Will you read Item 3450 again?

Mr. BRONSON.—3540 is the one your Honor wants.

The COURT.—I want you to read the one that refers to the bolt holes.

Mr. BRONSON.—3540.

The WITNESS.—3540, that is the rate on forgings.

The COURT.—What was the last one which you read?

The WITNESS.—3450.

The COURT.—He said, “Not further finished than being drilled with bolt holes.”

The WITNESS.—That is Item 3540, on page 296,

(Testimony of A. B. Cade.)

"Forgings, N. O. S., not further finished than being drilled with [38—17] bolt holes."

The COURT.—That does not touch shafting at all?

The WITNESS.—That applies to all types of forgings that are not further finished than as described, regardless of whether they are shafting or any other type.

The COURT.—If they are forgings they are not shafting.

The WITNESS.—A shafting may be a forging, in its rough stage, which I will illustrate to you by pamphlets which I have here. (Showing.) This pamphlet illustrates a steel ingot as poured into a mold; the ingot is then put into the furnace, heated and put under the hammer or press, illustrating what is termed a forging (showing) and, if it please your Honor, that is rough and still a forging, but it is in rough stage. There is a forging (showing another picture). Now, that later is put through a lathe. This shows a shaft in the lathe being turned (showing). That is the machine work that is placed on the article which brings it out and shows a further finish than the rough forging; that is turning down to a required dimension as shown in the specification.

Q. (The COURT.) And what you call a forging out of which it is intended to make the shaft, you would call it shafting?

The WITNESS.—If it was intended for a shaft in the rough stage which I will refer to by this cat-

(Testimony of A. B. Cade.)

alog, you would term it a forging, as illustrated here (showing). That would be a forging in its present stage while intended for a shaft it would not be a shaft, it would be only a forging; but when turned and dressed [39—18] down it then ceases to be a forging and becomes a shaft.

The COURT.—A forging takes a higher rate than a shaft?

The WITNESS.—No; they take about the same rate in the commodity tariff.

Q. (Mr. WINDERS.) Mr. Cade, was there considerable—or has your experience brought you in touch with a considerable quantity of shipments of this character? A. It has.

Q. And with a considerable quantity of just plain forging? A. It has.

Q. Was there a considerable quantity of this character of material which had been lathed or machined down to  $\frac{1}{8}$  inch of the final finish, moving during the same period to this country?

A. A very large quantity; in fact, all over the Pacific Coast.

Q. And flanged as this was? A. Yes.

Q. Has there been any classification made or tariff applied in connection with the movements of any of this same commodity at a rate lower than the 5th class rate covering shafts and shafting?

Mr. BRONSON.—You are asking him for a conclusion of law.

Q. I will ask you whether any inspector, any classification committee, any carrier, any commis-

(Testimony of A. B. Cade.)

sion, or anyone else, in consideration of the classification and tariff to be applied to this material has applied any different or other or lower classification than that to which you have testified—you have testified there were large quantities [40—19] of it moved here on the Pacific Coast.

Mr. BRONSON.—I do not think that that is material—I object to it as irrelevant, immaterial and incompetent.

The COURT.—The objection is overruled.

A. There has been a very heavy movement of this same material, line shafts, tail shafts and thrust shafts used in the shipbuilding industry during the war period, and our inspectors have watched the movement and properly described the material, and the 5th class rate has been applied. In some instances the class "A" rate has been applied through misunderstanding, which is 2¢ per hundred pounds higher than the 5th class rate from that particular territory.

But the 5th class rates have been generally applied by all the North Coast lines and the lines leading into California, on this type of material until at a later date a specific rating was provided by the West Bound Commodity Tariff.

Q. Did you take part in the hearing on this same question of proper classification before the Interstate Commerce Commission? A. I did.

Q. And in that Northwest Steel Company case before the Commission did it cover the identical character of material that is involved here?

(Testimony of A. B. Cade.)

A. The same type.

Mr. WINDERS.—I might say that this same material has been before the Interstate Commerce Commission, and subsequently there was a lower rate put into effect. [41—20]

The WITNESS.—Yes, there was.

Q. After this movement?

A. Yes; that was in Transcontinental Freight Bureau Westbound Tariff 4-P.

Cross-examination.

Q. (Mr. BRONSON.) In other words, the Interstate Commerce Commission formulated a lower tariff rate for this class of material?

A. No; I would not say that. The Transcontinental lines established at the request of manufacturers and consignees both, a lower rating on this particular commodity just as was specified in their tariff 4-P, which you, probably, have before you. The Northwest Steel Company of Portland, Oregon, brought suit—

Mr. BRONSON.—I don't care for all that.

Q. The rate on this material is what, now?

Mr. WINDERS.—I don't think that is material.

Mr. BRONSON.—I am cross-examining him on the very point which you asked him.

A. The rate on this rough turned shafts, you want to know what it is now?

Q. Yes.

A. The tariff specifically provided for it now, and I have not got the tariff with me; but there has been some—

(Testimony of A. B. Cade.)

Q. Don't you know what it is?

A. The description is full and complete in the tariffs. I cannot say right offhand.

Q. You know it is \$1.60?

A. No, sir; I can't say that. [42—21]

Mr. WINDERS.—I will admit it is \$1.69.

The WITNESS.—The tariffs will speak for themselves; but there is a specific provision for that material now in the tariffs—there was not a specific provision then.

Mr. WINDER.—It is \$2.03 now, but at one time it was \$1.69.

Mr. BRONSON.—In 4-P, it is \$1.69.

Mr. WINDERS.—Yes, but later it is raised to \$2.03, but I object on the ground that it is immaterial.

The COURT.—The objection is sustained.

Q. (Mr. BRONSON.) You do not know of your own knowledge what this material was, do you?

A. I did not see it.

Q. Are you forming your opinion as to what you testified here from the specifications and the drawings?

A. I formed my opinion from the specification, blue-prints and from the description as shown by my employee who personally inspected the shipment or shipments.

Q. How much of your opinion is based on what your employee told you?

A. The employee did not tell me anything. You see, he is dead and has been dead for several months

(Testimony of A. B. Cade.)

—the employee who inspected these shipments passed away. From his record, and my general knowledge of the character of the commodity—I have personally examined many hundreds of car-loads.

Q. I understand that, but as to this particular shipment your testimony is based upon the records which your subordinate made.

A. And your blue-prints and specifications.  
[43—22]

Q. Can you testify as you have testified from the blue-prints and specifications alone?

A. Well, I think I could, if it was admitted by you gentlemen as to the character of the material contained.

Q. I say, have you done so; is your opinion based on the blue-prints and specifications or is it based on the report of subordinates?

A. It is based on the report of my employee, as I stated, his inspection record supported by your blue-print and specifications and my general knowledge of the commodity.

Q. Have you gone through these specifications?

A. Not carefully—not necessarily.

Q. Have you gone through them at all?

A. I have looked over them, yes.

Q. What part of this Plaintiff's Exhibit No. 1 do you take into account in your testimony in describing the material?

A. The illustrations as shown by circle 1, 2 and 3.

(Testimony of A. B. Cade.)

Q. Do you take these circled figures off at the left here?

A. No, not necessarily. This illustrates the type of shaft.

Q. Do you understand this represents the shaft as it was shipped out here?

A. I understand this represents the flange and the bore.

Q. Do you understand that these bolt holes were drilled in the flange?

A. I do not. In fact the record of the inspector that examined the shafting shows it was not bored; that it was machined within  $\frac{1}{8}$  inch of its final dimensions.

Mr. WINDERS.—Have you any objection to the classification—I want to offer it in evidence.

Mr. BRONSON.—I do not think it is competent, relevant [44—23] or material and I formally object to it. I do not dispute that it is a correct document.

The COURT.—It will be admitted.

(Bound volume of Western Classification No. 55 marked Plaintiff's Exhibit No. 5.)

Mr. WINDERS.—You are raising no point that it is not certified?

Mr. BRONSON.—No; not at all.

The COURT.—I take it that it should be admitted in order for the Court to determine what classification does cover it.

Mr. BRONSON.—I do not think it is a determinative feature.

(Testimony of A. B. Cade.)

Mr. WINDERS.—I also offer in evidence West-bound Tariff No. 4-O, and supplement.

(Marked Plaintiff's Exhibit No. 6.)

Mr. WINDERS.—In illustrating to the Court the witness referred to certain photographs in this catalog, and I will offer those as part of his testimony—just those pages that the witness referred to.

The WITNESS.—Take the one in the rough first, and the machined second and the lathed third.

(Pages from catalog above referred to are marked, respectively, Plaintiff's Exhibits 7, 8 and 9.)

Q. What is Exhibit No. 9?

A. That shows it after it has been through the lathe, either rough turning or finishing.

Q. And Exhibit No. 8 shows it in the lathe?

A. In the lathe, being turned.

The COURT.—The question in the case is not on classification [45—24] then but it is simply a question of the particular tariff that covers it; that is, which description comes the nearest to\*these articles.

Mr. BRONSON.—That is our contention.

Mr. WINDERS.—I think that is true.

The COURT.—And there is no dispute but the one tariff to cover it all, it is a question of which rate—no one contends it should be divided up.

Mr. WINDERS.—No, it is all the same.

Mr. BRONSON.—Yes, that is correct.

Q. Now, you are not a machinist? A. No, sir.

(Testimony of A. B. Cade.)

Q. You have had no experience as a machinist or with machinery?

A. Not except in a general way.

Q. You have been employed all of your life with the railroad?

A. Yes, but my employment with the railroad brings me in contact with every industry, and in following my profession it is necessary for me to go through factories and watch the method of procedure before and after, which is very frequently done. We have to have the knowledge acquired thereby in handling questions which are brought before us, so whenever it is found necessary—

Mr. BRONSON.—That is all.

A.—we make a detailed investigation at the plant.

Mr. BRONSON.—That is all.

Q. (Mr. WINDERS.) Mr. Cade, the specifications offered here do show that this material was to be lathed down to  $\frac{1}{8}$  inch of the final finish?

A. They do.

Q. And from the plans and specifications presented to you [46—25] Mr. Cade, only without anything your inspector said, would your classification be the same?     A. It would.

(Witness excused.)

**Testimony of T. W. Meckstroth, for Plaintiff.**

T. W. MECKSTROTH, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

(Testimony of T. W. Meckstroth.)

Q. (Mr. WINDERS.) State your full name.

A. T. W. Meckstroth.

Q. Mr. Meckstroth, were you agent for the United States Railroad Administration operating the Northern Pacific Railway located at Seattle at the time these four cars moved? A. Yes.

Q. And was the matter of the delivery and the collection of the charges under your jurisdiction and supervision? A. Yes, sir.

Mr. BRONSON.—I do not think there is any dispute as to what we paid. The allegations of the complaint are correct as to the amount which we paid and the amount which you claim is due; we have no dispute.

Q. The original bills, the expense bills as presented were based upon the class "A" rate, or \$2.40? A. Yes.

Q. And the Puget Sound Machinery Depot Company contended that \$1.37½ is correct, and paid that rate? A. Yes. [47—26]

Q. And later you received a ruling from the Western Classification Committee and you reduced the expense bill to \$2.37½? A. Yes.

Q. According to the 5th class rate? A. Yes.

Q. Merely for the purpose of having this before the Court I will ask you if these four copies of expense bills covering the charges which you contend were owing together with the war tax accruing, were prepared under your direction, and copies of those delivered by you to the Puget Sound Machinery Depot.

(Testimony of T. W. Meckstroth.)

Mr. BRONSON.—We admit all of that.

Mr. WINDERS.—I will then offer in evidence the copies of the expense bills showing the amount paid and the amount still owing on these cars in accordance with the rate based upon \$2.37½ per hundred pounds plus the war tax.

(Marked Plaintiff's Exhibit No. 10.)

Q. Those expense bills contain a correct description of the property and the weights of the property that was handled in accordance with the bills of lading which you just checked over?    A. Yes.

Q. There is only one other question I want to ask you. When you presented these expense bills to Mr. Walker did you suggest to the Puget Sound Machinery Depot at that time and to Mr. Campbell that he should pay those charges and then if the rate was too high, file a claim for reparation with the Commission? [48—27]    A. Yes, sir.

Mr. BRONSON.—That is true all right enough; but I don't think it is material.

The COURT.—If you say it is true, I will sustain the objection as being admitted.

Mr. WINDERS.—It is admitted that all the freight charges that have been paid have been on the basis of \$1.37½.

Mr. BRONSON.—Yes.

Mr. WINDERS.—In connection with this case I will offer in evidence, in connection with the definition of these materials, the opinion of the Interstate Commerce Commission in Cause No. 11973, found in Vol. 66, Interstate Commerce Commission

(Testimony of T. W. Meckstroth.)

Reports, on page 633. I offer that only to show, in connection with the finding that this material was not forgings; it was shafts and shafting, as contended for by Mr. Cade.

Mr. BRONSON.—You offer to prove that it was found that this rate was not reasonable and was reduced?

Mr. WINDERS.—No, sir; I am offering the portion of the opinion in which they find that the classification at the time under the tariff existing was correctly the 5th class, and it was not rough forgings.

Mr. BRONSON.—Well, I don't think that that is competent evidence in this case, or that it should have any weight with the Court. It is not fixed by any law that I know of as having any evidentiary weight to the Court. It is not competent for them to render an opinion which is binding on the Court, and I object to this expression of their opinion on this [49—28] matter.

The COURT.—It will be admitted as Plaintiff's Exhibit No. 11.

Mr. BRONSON.—I think if he offers any part of it he should offer it all.

The COURT.—No objection being made—

Mr. BRONSON.—I object to any part of the opinion, but I say if he offers it he should offer it all.

The COURT.—Objection being made to a part of it being considered without the whole decision,

(Testimony of T. W. Meckstroth.)

the objection will be sustained and the whole of the decision will have to go in the record.

Mr. WINDERS.—I have no objection to offering the whole decision, and I only want to do this; I want to offer the whole decision in connection with the determination of the proper classification of this material. It is admitted in this case we have asked these people to pay this rate and file their application for reparation. Under the law, of course, the probabilities are they would be entitled from the Commission to some relief. Now, I am not offering it for that purpose. I am offering it for the purpose of showing the classification that is adopted.

Mr. BRONSON.—I offer now in open court to have judgment entered against us for the difference between what we paid and what the Commission found to be right—we are perfectly willing to pay it.

Mr. WINDERS.—This Court has not any jurisdiction on that; all this Court can do is to enforce the tariff rate, and then you can go to the Commission. I would like [50—29] to have you file your claim for reparation.

The COURT.—You do not have to read all that, but what you depend on being part of the decision and it not being admitted between counsel what part is applicable the whole decision will have to go in, but you can use such parts as you choose.

Mr. WINDERS. — (Reading:) “Complainant corporations, Northwest Steel Company and Co-

(Testimony of T. W. Meckstroth.)

lumbia River Shipbuilding Corporation, were engaged at Portland, Oreg., during the period covered by the complaint, in the construction of steel ships for the United States Shipping Board, Emergency Fleet Corporation. The complaint filed November 27, 1920, alleges that the rates charged on 25 carload shipments of 'steel forgings' from Camden, N. J., Buffalo, N. Y., and Gary, Ind., to Portland during the period from July 14, 1918, to September 6, 1919, were unjust and unreasonable to the extent that they exceeded certain commodity rates subsequently established. The complaint was orally amended at the hearing to include additional shipments. An intervening petition filed at the hearing by the Todd Dry Dock & Construction Corporation, United States Navy Department, and United States Shipping Board, Emergency Fleet Corporation, attacks the rates charged on shipments of similar commodities moving during the same period from Nicetown and Titusville, Pa., to Tacoma, Wash. Reparation is asked by complainants and interveners. Rates will be stated in amounts per 100 pounds.

"Complainants' shipments moved over the defendant carriers' line and consisted of rough turned solid forged-steel shafting of three distinct types known as thrust, line, and propeller or tail shafts. The thrust shafts were 9 feet long and weighed approximately 8,500 pounds each. They had a flange turned on one end and, at about the middle, several smaller flanges or collars. The

(Testimony of T. W. Meckstroth.)

line shafts were 22.5 feet long, weighed approximately 12,500 pounds each and had flanges turned on both ends. The propeller or tail shafts were 17 feet long with a flange turned on one end and tapered at the other end. They weighed approximately 9,000 pounds each. The specifications under which the shafting was manufactured provided that it should be rough turned before shipment to within one-eighth or one-sixteenth inch of final dimensions. The specifications were largely disregarded by the manufacturers. Most of the shafting was not rough turned down as much as it should have been, and the rough turning was in substance merely a precautionary measure taken by the manufacturers to detect flaws which might otherwise go undetected at the mills and result in rejection [51—30] at destination. The final turning which produced the finished shafting was done at destination at the expense of complainants. The shafting comprising interveners' shipments was similar to that comprising complainants' shipments, except that certain of it was hollow and of somewhat different dimensions. From a rate standpoint it is entitled to the same treatment.

"Certain of the shipments were originally billed as rough forgings but the billing was changed en route or at destination by defendants' inspectors and charges were ultimately collected on most of the shipments on basis of the applicable fifth-class rates of \$2,375 from Camden and Nicetown, \$2,315 from Buffalo and Titusville, and \$2.19 from Gary.

(Testimony of T. W. Meckstroth.)

Other shipments charged class-A rates were over-charged. The current western classification provided that 'shafts or shaftings, iron or steel, other than crank shafts, without cams, couplings or fittings, not key-leaved nor key-seated,' would take fifth-class rates. Witnesses for defendants testified that in their judgment all of the shipments should have been charged class A rates applicable to 'shafts or shaftings, iron or steel, with couplings only attached.' The articles shipped do not fall within this description. While they had flanges which were used in bolting them together to make the assembled shafts, these flanges were not couplings as that term is used in the classification. The term 'coupling' is not specifically defined in the classification but the manner in which it is used therein signifies that it is a separate article and not an integral part of one of the articles that are to be coupled together. Furthermore, some of the thrust shafts had collars turned upon them, whereas the class A rating applied on shafting with couplings only attached.

"The articles shipped were not rough forgings as contended by complainants and interveners. While not finished shafting, they had progressed in manufacture beyond the forging state and were cognizable as shafting."

Mr. WINNERS.—I think I will offer in evidence only one letter, for the purpose of showing that at the time that this shipment moved not only was it billed as forging, but it was your contention that it

(Testimony of T. W. Meckstroth.)

was forgings; that is your letter returning our expense bills and attempting to base it on the \$1.37½ rate on rough forging. [52—31]

Mr. BRONSON.—We have no objection to that. We admit that was written.

(Letter marked Plaintiff's Exhibit No. 12, and read into the record as follows:)

**Plaintiff's Exhibit No. 12.**

(On the letterhead of Puget Sound Machinery Depot, dated at Seattle, April 7, 1919.)

T. W. Meckstroth, Agent,

N. P. Ry. Co.,

Seattle, Washington.

Dear Sir:

We are returning enclosed herewith, your Expense Bill, dated April 5th, Number 0680, covering charges on carload of Forgings, PRR Car. #294476.

We are entitled to a rate of \$1.37½ per 100 Lbs. on this Car in accordance with Item 3540, Page 296, Tariff 40, as this car contains Forgings and not finished shafting. The Shafting is still in the rough state and must be finished in our Shop here.

Kindly correct the charges on this car, and oblige

Yours very truly,

**PUGET SOUND MACHINERY DEPOT.**

(Signed) **GEO. B. GEMMILL,**

Asst. Secretary.

GBG—L.

Mr. WINDERS.—I think, showing their own construction of the proper classification of this ma-

(Testimony of T. W. Meckstroth.)

terial, I will offer in evidence a further letter of the Puget Sound Machinery Depot (showing).

Mr. BRONSON.—I do not think that ought to be admitted in evidence. I do not think anything in the way of a suggestion of compromise or anything of that kind is competent at all.

Mr. WINDERS.—What we propose to show is this, that at [53—32] the time Mr. Meekstroth and Mr. Walker talked to Mr. Campbell and again presented these bills, the new and subsequent tariff had been filed, that under that tariff it was proper that if the tariff charges which had accrued were paid in the manner provided by the act the Commission might have afforded some relief, and that they were requested to pay the tariff rates and then file their application, and that in response thereto they expressed their willingness by this letter, not to pay the tariff rates which were in effect at the time this shipment moved, but to pay a tariff rate which was subsequently put into effect under a similar classification for which we are now contending. The only purpose of that is not to show a compromise, but to show that they themselves knew that these shipments could not be classified either as rough forgings or plain shafting, as they are now contending.

The COURT.—The objection is sustained, as it appears to be principally in the nature of a compromise.

Mr. WINDERS.—I will withdraw the offer then, your Honor.

(Testimony of T. W. Meckstroth.)

The COURT.—It is your contention, Mr. Winders, that this turns on the meanings of the expression "Not otherwise finished."

Mr. WINDERS.—"N. O. S." means not otherwise specified, that is under Item 3540.

The COURT.—That item contains the expression "Forgings not otherwise finished," whether that means steps taken towards other finishing, or whether it means finished finally. [54—33]

Mr. WINDERS.—Our contention is that rough forgings must be rough forging, and if there is any machine work done on them that they must be under the other classification.

The COURT.—And then it is your contention that finished means finished, Mr. Bronson; the dispute narrows down to that?

Mr. BRONSON.—Our contention is that finished means finished, and the evidence we will offer to the Court will be that this process of rough turning is not a finishing process for that purpose at all. It is to determine whether there are any cracks or imperfections.

The COURT.—The plaintiff's contention is that there is no further finishing done—now, I am talking about Item 3540, about these bolt holes—not further finished than being drilled with bolt holes. The question I have in mind is whether or not further finished than being drilled with bolt holes means nothing more done towards finishing, or whether it means not entirely finished in some other way.

(Testimony of T. W. Meckstroth.)

Mr. WINDERS.—Of course, with reference to the classification under 4, 7 and 9, according to Mr. Cade's testimony, it comes under the head of No. 9.

The COURT.—“Shafts or shafting, iron or steel”—do both sides agree that cams, couplings or fittings refers to separate contrivances to go on the shafts? “9. Not key-leaved nor key seated”—no one contends that they are key-leaved or key-seated?

Mr. BRONSON.—No. [55—34]

Mr. WINDERS.—Our contention is that this shafting was flanged and was roughly machined, turned down.

Mr. BRONSON.—Do you contend that the flange has anything to do with it?

The COURT.—Could there be such a thing as a line shaft without a flange?

Mr. WINDERS.—It takes it out of the plain shafting.

The COURT.—Is there any such a thing as a line shaft without a flange?

The WITNESS CADE.—Yes, there is. Practically all of the plain shafting moving from eastern territory to the Coast, or *vice versa*, under the term shafting is the plain cylindrical-shaped bars drawn through a die or turned on a lathe and polished—most of them drawn through steel dies, which is used for line shafting of all types of manufacturing plants.

The COURT.—How are they joined together?

The WITNESS.—They are joined together in a

(Testimony of T. W. Meckstroth.)

straight line by what they call couplings; it has a collar effect that seats over it, and is key-seated and bolted into the shaft proper, and then brought together.

The COURT.—In the one the bolts are used in the flange and in the other this is key-seated in the shaft and seated in the couplings?

The WITNESS.—In the other the coupling is also joined by bolts. It is first fastened to each end of the independent straight shaft and then they are brought together and coupled by bolts. And as that shaft revolves, they must be so fastened that there will not [56—35] be a slip, and that is the reason for the key. The straight plain shafting will pack very closely, whereas if you have a flange, shoulder and flange, you have spaces, according to the width of the flange, between the pieces.

Mr. WINDERS.—The plaintiff rests.

The COURT.—Is there any evidence for the defense?

Mr. BRONSON.—Counsel will admit that where there are two rates applicable to any one commodity, that the shipper is entitled to the lower rate.

Mr. WINDERS.—Yes.

Here the plaintiff rests. [57—36]

**Testimony of George B. Gemmill, for Defendant.**

GEORGE B. GEMMILL, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) State your full name.

A. George B. Gemmill.

(Testimony of George B. Gemmill.)

Q. What is your business or association?

A. Assistant secretary of the Puget Sound Machinery Depot.

Q. And how long have you been with the Puget Sound Machinery Depot? A. Sixteen years.

Q. What period of that time have you been familiar with machinery or shafting such as in this case?

A. About twelve years, since we have had our shops.

Q. The Puget Sound Machinery Depot operates machine shops? A. Yes.

Q. And installs shafting and handles it in all parts?

A. We do not install it in the boats, but we finish it complete in our shop for installation in the boats.

Q. Are you familiar with the purchases and shipment of shafting? A. Yes.

Q. State whether or not your dealings in it are extensive in character, or otherwise? A. Yes.

Q. How extensive are your dealings with this type of material?

A. One of my duties is the purchasing of all material that arrives from the East, and material of this nature I order in accordance with the specifications and blue-prints submitted to me by our engineering department, so that my order when it goes to the factory will have all of the [58—37] specifications and necessary information.

Q. State whether or not the dealings of the Puget Sound Machinery Depot in which you are concerned

(Testimony of George B. Gemmill.)

are extensive in character, whether they run into large amounts, such as carloads. A. They do.

Q. Can you give an idea of how much?

A. Well, we were receiving several hundred car-loads a year at that time for our machine shop.

Q. And you have been personally familiar with those transactions? A. Yes.

Q. And you are familiar with the use and construction and so forth of machinery in connection with the shafting? A. Yes, sir.

Q. I will ask you with reference to Plaintiff's Exhibit No. 1, whether this is a blue-print prepared either by you or for you in connection with the shipment concerned in this case? A. Yes.

Q. Describe on this Exhibit No. 1 the illustration of the material or the shafting which is under discussion here.

The COURT.—The other witness referred to Circles 1, 2 and 3.

A. This is a drawing of the finished shaft as we would deliver it to our customer. We ordered the shafting from the Camden Forge Company, rough turned to within  $\frac{1}{8}$  inch of the finished size. That is, after we received the shafting we had to take off  $\frac{1}{8}$  inch all over, or  $\frac{1}{4}$  of an inch in diameter of the shafting and the couplings— [59—38] those flanges.

Q. In what way, if any, do those No. 1, 2 and 3 drawings on this Exhibit No. 1, differ from the shaft as it was shipped?

A. These drawings No. 1, 2 and 3 show the shaft-

(Testimony of George B. Gemmill.)

ing finished down to the finished sizes, with the bolt holes in the flanges drilled, while we brought the shafting out in a rough turned state.

Q. None of the other illustrations on here have anything to do with the shafting.

Mr. WINDERS.—We admit that all that was done with the shafting was that it was rough turned down to within  $\frac{1}{8}$  inch of the final finish with the flanges on, and that it was not key-leaved or drilled or anything of the kind—we have not contended anything to the contrary.

A. This Exhibit No. 2 shows the shaft on the top of the drawing, not numbered, shows another shaft which is commonly known as the tail shaft; it has a flange on one end and the other end is tapered to take the propeller of the ship.

Now, this shaft is brought out in the rough state, rough turned to within  $\frac{1}{8}$  inch of the finished diameter, and we finish it here.

Q. You mean a quarter of an inch of the finished diameter?

A. Yes; a quarter inch in diameter and  $\frac{1}{8}$  inch all over.

Mr. WINDERS.—We will admit that that was true of all of them.

Q. (Mr. BRONSON.) And nothing more was done—none of this finished work?

A. No; not threaded, and the taper was not on. That would [60—39] be forged straight, and we would have to machine it all here.

(Testimony of George B. Gemmill.)

Exhibit No. 3 shows the shaft as it is finished or installed in the boat. There is the complete shaft from the propeller end up to the thrust shaft that connects with the engine. That is the complete shaft as it is installed in the boat, and these show the flanges that connect the different sections of shafts.

Q. What is the purpose of this rough turning; what do you call that, technically?

A. While we specify the shafts rough turned, the process in the forge shop is commonly known as hogging the shaft. In other words, the lathe on which this shaft is rough turned is called the hogging lathe. It is not a lathe which you would finish a piece of shaft in. It would not be true enough to turn a shaft to finished dimensions, because they take a very heavy cut when they are rough turning it, and it is called a hogging lathe, and in the forge shop they refer to the rough turning process as hogging the shaft—taking the rough surface off.

Q. What is the purpose of it?

A. We buy the shafting from the forge shop in the East rough turned so that the forge people will be satisfied that the shaft is not defective and is forged true to size before it is shipped out here. Because if it was shipped out here in the rough and we took the first scale off by the rough turning process and the forging developed any cracks, or was not forged true to size, that is if it was out of round,

(Testimony of George B. Gemmill.)

it would be rejected and they would have to replace the material F. O. B. Seattle. [61—40]

It is not the saving in the purchase price that the shaft is ordered rough turned for; it is to be sure that you will get shafting that is not defective, because when the shafting comes from under the hammer it has got a heavy scale on it and it is in the rough state and from the appearance of it you cannot tell whether there is a defect in the way of a crack or a flaw until it is put in the hogging lathe and the first scale taken off.

Q. What will that disclose, in taking off that outside scale?

A. The forge people can determine immediately if the shaft is true to size and if there are any defects. If there are any defects they will show up by the time you get it within  $\frac{1}{8}$  inch of the finished size.

Q. And is that the only way of determining whether there are defects?

A. That is the only way.

Q. There were no connections on any of this shafting, of any kind? A. No connections.

Q. Were there any preparations made for any connections, except just as it was forged?

A. Just as it was forged.

Q. No bolt holes, no key-seating or any devices of any kind or character? A. No, sir.

Q. In your opinion, Mr. Gemmill, as a machinery man, state to the Court whether or not the shafting which is under discussion here comes within the

(Testimony of George B. Gemmill.)

definition in this Westbound Freight Tariff 4-O, page 296, Item No. 3540, specifying "Forgings, N. O. S., not further finished than being [62—41] drilled with bolt holes?"

A. I believe that it does.

Q. What is your opinion as to whether or not it comes within the definition contained on page 293 of the same book under "Shafting, plain," with the note below "Carload rates apply only on plain shafting without connections"?

A. That rate can also be applied.

Q. Is it a forging? A. It is.

Q. Is it shafting? A. It is.

Q. And are those definitions within trade which you are familiar with?

A. Yes. A forged shafting can be called even in the rough state before it is put in the lathe to have the first scale taken off, what they call the hogging process, before it is put in the machine at all, the rough forging is referred to as a shaft as well as a forging.

Q. Is this shafting within the definition on page 296 of tariff 4-O, finished in any particular whatsoever?

Mr. WINDERS.—He has testified as to the condition of this shafting, and "Not otherwise finished" is plain English.

The COURT.—I understand, the case is tried to the Court—and where you have experts, I understand that the experts are not only witnesses but

(Testimony of George B. Gemmill.)

they are advocates and they argue a case, and so I will overrule the objection.

Mr. BRONSON.—This is also in answer to Mr. Cade's definition. [63—42]

The WITNESS.—It is not finished.

The COURT.—By that I understand you to mean that it is not further finished?

The WITNESS.—Well, it is not what we call a finishing process at all.

Q. (Mr. BRONSON.) In other words, as I understand you, it was a testing process—to test its condition?

A. Yes. It is hogged or rough turned in the forge shop to determine whether the shaft is defective or not, and the lathe they put that shaft on they could not finish it on that lathe.

Q. Now, Mr. Gemmill, you have heard the testimony here of Mr. Cade with reference to West-bound Tariff 4-P.

A. 4-P is when the change took effect. I could not locate that.

Q. In the volume I have here, page 313, Item 2142, is specified shafts, line; shafts, propeller; shafts, tails; shafts, thrust. Now, in the trade and in the business of shipping shafting and so forth, is there any distinction made there between line shafting, as to whether or not it has flanges on it?

Mr. WINDERS.—I do not see any provision in the tariff subsequent to the shipment has anything to do with the case, and that tariff which you are reading is subsequent.

(Testimony of George B. Gemmill.)

Q. (Mr. BRONSON.) I will ask you, may shafting be properly termed a line shaft whether it has flanges on it or whether it has no flanges on it?

A. Well, a plain bar of shafting, for instance, three inches in diameter and twenty-four feet long, you put it in the [64—43] shop and you connect it up with another piece of shafting with proper couplings or flanges, shaft couplings which are separate pieces, and drive some machines, why, it is referred to as a line shafting.

Q. You do not get my question—whether or not the shafting with the flanges forged on originally as an integral part of the shaft is also termed line shaft? A. Yes, it is.

(Witness excused. Whereupon a recess is taken until 2:00 o'clock P. M.)

AFTERNOON SESSION, 2:00 o'clock; continuation of proceedings pursuant to recess; all parties present as at former hearing.

#### **Testimony of W. Scott Matheson, for Defendant.**

W. SCOTT MATHESON, produced as a witness on behalf of defendant, being first duly sworn, testifies as follows:

Q. (Mr. BRONSON.) State your full name.

A. W. Scott Matheson.

Q. What is your business?

A. I am vice-president and manager of the Bacon & Matheson Forge Company. We manufacture forgings and iron and steel products.

Q. Do you ship from the East raw material?

(Testimony of W. Scott Matheson.)

A. We do.

Q. How long have you been engaged in that business? A. Directly, 17 years.

Q. Part of that time with the Seattle Construction & Dry Dock Company?

A. Yes, 6 years. [65—44]

Q. Are you familiar with all of the mechanical methods and materials that go into that business?

A. Fairly so.

Q. You have had practical experience?

A. Yes.

Q. Without duplicating this record, I would like to have you look at the tariff—those are introduced in evidence?

Mr. WINDERS.—Yes.

Q. I will ask you to examine Exhibit No. 1 offered by the plaintiff here, and more particularly with reference to the items designated 1, 2 and 3, and state whether or not you understand what those are and what they represent. A. Thoroughly.

Q. Those are pieces of shafting?

A. Line shafting for a steamer.

Q. Now, assuming that those pieces were shipped out here from Camden, New Jersey, being part of four carload lots; that they were not bored for the bolt holes; that they were only hog finished down to about  $\frac{1}{8}$  inch, and so forth, and considering all of those facts, I will ask you whether or not they come within the definition in Plaintiff's Exhibit No. 6, at page 296, under the head of Item 3540, "Forging

(Testimony of W. Scott Matheson.)

N. O. S., not further finished than being drilled with bolt holes"—whether they come within that.

Mr. WINDERS.—I object to that on the ground that this witness has not shown himself qualified to answer that question.

Mr. BRONSON.—He is more of an expert than your witness Cade was. [66—45]

The COURT.—I will overrule the objection and we will see how much of an argument he can make for his construction of this.

Q. Are these forgings within such a description as that, Mr. Matheson?

A. Yes, I would say so, that they were.

Q. I will ask you whether or not they would come within the description here on page 293 of the same exhibit, "Shafting, plain," having reference to Note 1, which reads as follows: "Carload rates apply only on plain shafting without connections"; in other words, are they plain shafting and without connections?

A. Yes, that is their description.

Q. Now, Mr. Matheson, you are familiar with the manufacture of these forgings; I will ask you what is the process in the manufacture of forgings; just briefly as you can, describe them.

Mr. WINDERS.—The specifications are in evidence—the specifications show what was done with those forgings.

The COURT.—I do not think he need describe all of the processes.

(Testimony of W. Scott Matheson.)

Mr. BRONSON.—I only want to go to one thing, and that is with reference to the hog machining; that is what I am coming to, and it will only take two minutes.

The COURT.—You may ask the direct question about that. I do not suppose there is any dispute about that.

Mr. WINDERS.—There is no dispute that these shafts were in the condition called for by these specifications.

The COURT.—I understand your position is, whether you call it hog finish or any other name, that when they [67—46] are partly dressed or lathed—

Mr. WINDERS.—They become shafting.

The COURT.—Whether they are hogged or any other kind of lathing that then they are—

Mr. WINDERS.—Shafting.

The COURT.—(Continuing.) —they are further finished.

Mr. BRONSON.—I want to ask this question, just so as to shorten it up. Whether hog planing is a finishing process or for the purpose of finishing a material or whether it is for the purpose of determining its character.

A. The rough turning is done primarily to determine whether or not shafting is a perfect shaft, whether there are any defects show up.

Q. What percentage does it occupy, if any, of a finished shaft?

(Testimony of W. Scott Matheson.)

A. That would depend somewhat on the size of the shaft. You are speaking of these particular shafts, and the weights as given in the invoices there—I would say, roughly, from 2% to 4%—the hogging to the finished shaft.

Q. Now, I will ask you with reference to the drilling of bolt holes in the flanges on shafts of that kind, at what time in the process can the bolt holes be drilled?

Mr. WINDERS.—I object to that on the ground that it is immaterial; there is no contention made that there were any bolt holes.

Mr. BRONSON.—I want to call your Honor's attention in that connection to the language of the tariff provision: "Forgings N. O. S., not further finished than being drilled with bolt holes." I want to show to the Court that bolt holes cannot practically be [68—47] drilled in the flanges of the shaft like that until this hog finishing has been done in order to see what the shafting is.

The COURT.—The objection is overruled.

Mr. WINDERS.—I want to call your Honor's attention to this fact, that that provision is not confined to shafts. It has reference to all forgings. The mere fact that this particular kind of a forging could not have drilled holes in it before the finishing was done would not add to or take from the provision of the tariff.

The COURT.—It may be that I will hold with you on that eventually, but I will let counsel make his record on this.

(Testimony of W. Scott Matheson.)

The WITNESS.—The bolt holes would not be drilled until the shaft has been centrifugally turned. You can readily see that they might have the holes in such position with reference to the balance of the shafting that the shaft would not clean up when they came to machine it. So that the holes are never drilled until the centrifugal cut had been taken off the shaft; then the layer-out can lay out the bolt holes and see that they are properly placed in the material for the shaft to clean up according to the bolt holes.

Q. In other words, it is not practicable to drill the bolt holes until you know where the exact center of the shaft is to be? A. Yes.

Q. And you cannot tell that until this rough hog machining [69—48] has been done?

A. Yes; it would be impracticable to drill the holes first.

Q. In your opinion, is a forging such as has been described here, on which this rough hog machining has been done, a finished product in any particular whatever? A. No, sir, it is not finished.

#### Cross-examination.

Q. (Mr. WINDERS.) Mr. Matheson, what do you call those articles that are shown on these plans, and by the question that has been asked by Mr. Bronson; what are they—what would you call that?

A. They are a forging—rough turned forging.

Q. Well, what would you call them when they are finished?

A. When they were completely finished?

(Testimony of W. Scott Matheson.)

Q. Yes.    A. They were shafting.

Q. Shafting or shafts?    A. Shafts or shafting.

Q. Well, now, what are they, shafts or shafting?  
Do you call them shafting?

A. Either word is used.

Q. What do you use in ordering these particular articles; do you order shafting or do you order shafts, and in what way are they referred to on the prints and one thing and another which you prepare?    A. Well, it would be a shaft.

Q. A shaft—and all of these shafts as shown in evidence here are prepared according to blue-prints and specifications [70—49] which are furnished, are they not?    A. Yes, sir.

Q. Now, there is such an article as plain shafting, as that term is understood in commercial business; is there not?    A. Yes, sir.

Q. And stocks of plain shafting are carried by various dealers in that character of articles?

A. Yes.

Q. Do you carry plain shafting?

A. We do not.

Q. Who does carry plain shafting in Seattle, if anyone?    A. Machinery houses carry it.

Q. And they have regular stock sizes, don't they?

A. Yes.

Q. And did you ever know of any commercial shafting carried in stock by machinery houses that was other than ordinary straight shafts?

A. No, I think not.

Q. If you want a shaft or shafting made with

(Testimony of W. Scott Matheson.)

flanges on the end or anything of that kind you have to order it made, don't you? A. Yes.

Q. The firm of Meese & Gottfried are pretty large dealers in this class of material, are they not?

A. Yes.

Q. And I notice in their catalog covering transmission, elevator and conveying machinery, that they have listed here lists of turned and ground steel shafting of various lengths?

A. Yes. [71—50]

Mr. BRONSON.—That is going outside of the cross-examination; I did not ask him anything about that.

Mr. WINDERS.—You asked the definition of plain shafting.

THE COURT.—The objection is overruled.

Q. The various shafting in this catalog, and I take it in other catalogs, that is generally kept in stock and on hand is usually as shown in this straight shafting?

A. Yes.

Q. And then they have collars to connect this shafting, and flanges that they bolt on to the end of the shafting?

A. Yes.

Q. And it is this straight shafting and these collars and separate flanges which you would ordinarily find in stock? A. Yes.

Mr. WINDERS.—I think I will offer this catalog in evidence.

(Testimony of W. Scott Matheson.)

Mr. BRONSON.—I do not think that counsel can offer exhibits in evidence on cross-examination of my witnesses.

The COURT.—The objection will be overruled. Are you offering the whole book?

Mr. WINDERS.—I am offering such portions of that book as catalog commercial shafting and the couplings thereon, in explanation and in line with the cross-examination of this witness as to what is plain commercial shafting.

The COURT.—It will be admitted. Exception noted for the defendant. [72—51]

(Marked "Plaintiff's Exhibit No. 13.") I think you should take the time later to fill in this record by pointing out the pages.

Mr. WINDERS.—I will give the pages now: Being on pages 64, 65, 66, 67, 68, 69 and 70 of the catalog of Meese & Gottfried Company.

Q. Mr. Matheson, referring now to the specifications which went forward with these prints; I notice the first specification is for a line shaft forging with coupling on each end, roughened 4' 6" long, Item 4, Dwg. #E-399. The next item line shaft forging with coupling on each end, rough turned 4' 8 $\frac{1}{8}$ " long. The next item line shaft forging with coupling on each end, rough turned 4' 8 $\frac{3}{8}$ " long, Item 4, Dwg. #E-399.

Above shafts to be rough turned to within  $\frac{1}{8}$ " to 3/16" of finished diameters. Flanged couplings to have  $\frac{1}{8}$ " finish allowed all over.

(Testimony of W. Scott Matheson.)

In ordering a forging for the purpose of being used to make a line shaft you can and do order the forgings without any rough finish, don't you?

A. You could.

Q. And you do?

A. Yes, it is sometimes done.

Q. And when you order this rough finishing put upon these shafts, whether you call it hogging or whatever you may call it, there is a charge made for that?

A. There is.

Q. And if you order merely the rough forging done on the forging under these specifications which provide that any rejected forgings be replaced, if there were any defects [73—52] showed up in them when they came out here, the manufacturer would have to replace them? A. Yes.

Q. Now, referring to the next page "Tail shaft forgings rough turned to within  $\frac{1}{8}$  inch to  $\frac{3}{16}$  inch of finished diameters including taper and threaded ends, flanged coupling to have  $\frac{1}{8}$  inch finish all over as per drawing"; what does that mean, Mr. Matheson?

A. The end of a tail shaft is tapered to receive the propeller.

Q. Does that mean the end must be turned down rough more than the rest of the article—what I understand is that that tail shaft—

A. (Interposing.) The end would be of smaller diameter than the main part.

(Testimony of W. Scott Matheson.)

Q. What I am getting at is, they must take this tail shaft and the coupling on the end of the flange, and they cut that down with  $\frac{1}{8}$  of an inch to the final finish, and then it says also as to this tail end that they have to also point down this shafting, under this specification? A. Yes.

Q. So that at least as far as the pointing down the end of this shafting is concerned, there would not be any necessity of doing that for the purpose of discovering defects?

A. It is a further precaution.

Q. That end is tapered down more than the main body of the shaft will be when it is completed, is it not? A. Yes.

Q. So that that tapering down and the machine work done on the [74—53] other is of a great deal of assistance in the final finishing of these shafts, is it not—it saves a great deal of work?

A. It helps.

Q. And a charge is made for that by the factory?

A. Yes.

Q. Now it says "Line shaft forgings rough turned to within  $\frac{1}{8}$  inch to  $\frac{3}{16}$  inch of finished diameters; flanged couplings to have  $\frac{1}{8}$  inch finish allowed all over." What does that mean—flanged couplings to have  $\frac{1}{8}$  inch finish allowed all over?

A. Well, that is the flange on the end of the shaft. There is  $\frac{1}{8}$  inch material left all over.

Q. In other words, they were to leave  $\frac{1}{8}$  of an inch for the purpose of being finished out here?

(Testimony of W. Scott Matheson.)

A. There is  $\frac{1}{8}$  of an inch left on there all around.

Q. I don't understand myself just what you mean.

A. Suppose the shaft was finished and the size was to be 7 inches. The outside diameter would be  $7\frac{1}{4}$  as rough turned. If it was 2 inches thick it would be left  $2\frac{1}{4}$  inches thick, rough turned.

Q. And how about the flange?

A. That is the flange I am speaking of.

Q. In other words, they were not to finish the flange down to a point less than  $\frac{1}{8}$  of an inch all around, so that it would be a quarter of an inch in diameter?

A. This is arbitrary. There is no proposition called for in that—it would be a  $\frac{1}{8}$ .

Q. They would have to follow the specifications?

A. Yes, but there is a variance there; in other words, they [75—54] could easily come within  $\frac{1}{8}$  of an inch without any trouble, you see.

Q. Why would they specify here that they would want to leave  $\frac{1}{8}$  of an inch on this flange and coupling?

A. Well, that is left for the purpose of giving the forge people a chance there to go one way or the other—a small margin. Shafts are usually finished to a micrometer size; if it is finished to the size of  $7\frac{1}{8}$ , they would not allow you to vary more than a few thousandths of an inch and that calls for skilled labor.

Q. (Mr. BRONSON.) You are referring now to the finished product by the forge work here?

(Testimony of W. Scott Matheson.)

A. Yes.

Q. (Mr. WINDERS.) I am asking him why—and I understood him to answer why, for instance, the Puget Sound Machinery people would want to specify that they must not get within  $\frac{1}{8}$  inch of a final or total finish of these couplings on the end. Would that be because there might be a variance in the connection or something of that character?

A. No; that is the usual practice, to machine within  $\frac{1}{8}$  of an inch.

Q. This says they can't go less than  $\frac{1}{8}$  of an inch. What interest would the Puget Sound Machinery Depot have in stopping them from doing more work if they were willing to do it at the same price? They, apparently, restrict them to finishing these couplings or flanges to an extent that they must not get closer than  $\frac{1}{8}$  of an inch.

A. Well, that is good practice. They could remove that  $\frac{1}{8}$  finish as easily as they could a  $1/16$ . What I mean is that in taking the finishing cut the lathe will remove  $\frac{1}{8}$  [76—55] as easily as  $1/16$ .

Q. They specify this for the purpose of the ultimate user? A. Yes.

Q. That they do not want that taken off at the factory?

A. Well, for rough turning they would not want it taken off there.

Q. It also says taper and threaded ends are to be turned—that is what you have been referring to?

A. Yes.

(Testimony of W. Scott Matheson.)

Q. Now, are these tail shafts threaded at the point of origin? Look at these specifications. Does that provide for the threading of the tail shafts at the point of origin? (Handing papers to witness.)

A. No. I would say that that cut is run right out including the threaded portion. They do not cut down for the threaded portion, which is of smaller diameter.

Q. In other words, they would run a taper?

A. Run a straight taper.

Q. It says "The above order is for an odd quantity of shafting, but one set consists of four line shaft forgings and one propeller shaft." Those various articles were all to be used in connection with shipbuilding, were they not?

A. I presume so.

Q. When it refers to flanged coupling, that means flanged on the end? A. Yes.

Q. And "Forged steel shafts rough turned to within  $\frac{1}{8}$  inch of finished diameters including taper and small flange ends 24' 11 $\frac{7}{8}$ " Long 7 $\frac{1}{2}$ " Diameter with flange on one [77—56] end 8 $\frac{3}{4}$ " Diameter; other end tapered." Just look over the items. (Showing.) Does that mean that one end was tapered down and then the flange put on and the other end would be larger with another flange?

A. No. It is a flange on one end and the other end is taper.

Q. It says "Forged steel shafts \* \* \* in-

(Testimony of W. Scott Matheson.)

cluding taper and small flange ends." What do you mean by small flange ends?

A. Well, the drawing, probably, would show, but I would say a small flange is—

Q. (Interposing.) That they were to turn the shaft proper, and they were to turn down the taper end? A. Yes.

Q. And they were to turn the small flange end? A. Yes.

Q. With flange on one end  $8\frac{3}{4}$ " diameter and the other tapered? A. Yes.

Q. That means just one flange?

A. One end is tapered and the other end is slightly larger than the main part of the shaft. The main part is  $7\frac{1}{2}$ " and the flange end here is  $8\frac{3}{4}$ ".

Q. On the other, No. 40, it says "Forged steel shafts rough turned to within  $\frac{1}{8}$ " of finished diameter including taper and threaded ends"—it should be on each end? A. Yes.

Q. Now, in that case, as they would come from the factory with this rough turning, they would have this rough turned smooth and straight until it would get to each end and then both ends would be rough turned down to a point within  $\frac{1}{8}$ " of the final dimension? [78—57] A. Yes.

Q. There are a great many different kinds of forgings? A. Yes.

Q. And many of these forgings, which are not for propeller shafts, do have holes drilled in them?

A. Yes.

(Testimony of W. Scott Matheson.)

Q. In the rough? A. Yes.

Q. For wagon axles and purposes of that kind, that is correct? A. Yes.

Q. So that the statement that forgings had holes in them would not imply that it was necessary that any other work be done on the forgings other than to drill the holes? A. Shafting—

Q. I am not talking about shafting; I am talking about forging. I say, there is not anything in this tariff provision which you made reference to which says anything about shafts, is there

Mr. BRONSON.—That is not cross-examination. There may be a million things.

The COURT.—The objection is sustained.

Q. (Mr. WINDERS.) Now, it is not uncommon for forgings, without anything else being done to them, to have holes drilled in them?

A. No, sir, it is not.

#### Redirect Examination.

Q. (Mr. BRONSON.) But a forged shaft, to have holes drilled in it would have to have a flange? [79—58]

Mr. WINDERS.—I object to that as irrelevant and immaterial and on the further ground that the Western Classification that is introduced in evidence provides for shafts, some that have holes in them and some that do not. The only tariff provision that Mr. Bronson refers to is rough forgings and it does not say anything and it has not any classification with shafts or shafting.

(Testimony of W. Scott Matheson.)

The COURT.—The objection is sustained. It is already covered.

Q. (Mr. BRONSON.) Now, Mr. Matheson, will you examine pages 64 to 70 of Plaintiff's Exhibit No. 13, and state whether or not there is any relation there to shafting for vessels?

A. These are rolled shaftings; what they call cold rolled shafting—passed through rolls. They have not been forged at all.

Q. They have not been forged at all? A. No.

Q. They are for what purpose?

A. Line shafting and sawmills and—

Q. Are they in any way related to or used in ships?

A. No, sir, they do not use those in ships.

Q. Do those people handle any ship shafting of any kind?

A. I think not. I am quite sure they do not.

Q. This is in relation simply to shafting for mills and things of that kind? A. Yes.

Q. And the coupling in connection with it?

A. Yes.

Q. Mr. Matheson, I want to ask you a question that I overlooked [80—59] in direct examination, and I will ask you to wait until the Court rules.

I will ask you whether or not the shafting which has been described to you could be, in the parlance of the trade, defined as machinery?

Mr. WINDERS.—I object to that question upon two grounds; in the first place, the use of the word "shafting" is an assumption of something that is not

(Testimony of W. Scott Matheson.)

correct under the evidence in this case and under the specifications and under this witness' own testimony these are shafts and not shafting.

Mr. BRONSON.—Before the Court rules; I propose to offer in evidence a letter from one of the officers of this association defining it as shafting.

The COURT.—The objection is overruled. I understand that the witness is examining the specifications 1, 2 and 3.

Mr. WINDERS.—I object, on the ground that it is not within the scope of this witness' or any other witness' testimony to pass upon the method of classification in which any article may be put under the tariffs as approved by the Commission. Now, if the Commission wants to classify shafts as machinery, why that is a matter by which we are all concluded.

Mr. BRONSON.—I am not seeking to do that. I stated to counsel and the Court that I propose to offer a letter by which the plaintiff in this case claims that this is shafting or machinery.

The COURT.—I will overrule the objection. It is almost entirely a question of construction when you compare [81—60] these different matters in the tariff—I will allow the question to be answered.

Q. Is it machinery? A. It is not.

Q. It is not machinery? A. No.

Mr. BRONSON.—That is all.

Q. (Mr. WINDERS.) In other words, under your understanding of the definition of machinery

(Testimony of W. Scott Matheson.)

you would not consider a shaft any part of machinery, finished or otherwise?

A. A finished shaft would be a part of machinery.

(Witness excused.) [82—61]

**Testimony of George B. Gemmill, for Defendant  
(Recalled).**

GEORGE B. GEMMILL, recalled on behalf of defendant, testifies as follows:

Q. (Mr. BRONSON.) I will ask you to examine Defendant's Exhibit A-1, which is attached to a letter to the Puget Sound Machinery Depot from Mr. F. F. Wittenberg, Chief Inspector, and state whether or not you received that letter (showing).

A. Yes, I did.

Mr. BRONSON.—I offer that letter in evidence.

Mr. WINDERS.—I have no objection.

Mr. BRONSON.—I will read the letter.

Mr. WINDERS.—I will put Mr. Cade on later to show what that means.

Mr. BRONSON.—This is a letter addressed by the United States Railroad Administration to Mr. Cade, as follows: (Reading.)

“SUBJECT: Rough Turned forgings; Rates on.  
Mr. A. B. Cade, Superintendent,

Weighing & Inspection Department,  
Trans-Continental Freight Bureau,  
Seattle, Wash.

Dear Sir:

Referring to your letter of June 20th, File S-64-207, concerning proper rates under Trans-Continental Tariffs on

(Testimony of George B. Gemmill.)

"Rough Turned forgings, machined to within  $\frac{1}{8}$  or  $1\frac{1}{16}$  of an inch of final dimensions."

It is the opinion of this Committee, which is also concurred in by the San Francisco Committee, that such material is 'Shafting or Machinery' and should be rated accordingly.

"Yours truly,  
"(Sgd.) F. W. ROBINSON,  
"Chairman."

JWM:BM [83—62]

Q. Now, Mr. Gemmill, in considering your experience and so forth, I will ask you whether or not this shafting which is the subject matter of this action, or the freight on which is the subject matter of the action, is machinery? A. It is not.

Mr. WINDERS.—The same objection goes to that, because it is not proper for this man or anyone else to question the right of the Commission to classify shafts and shafting other than plain shafting under the head of machinery, and if they desire to do it they can do it, and your tariff shows that they have done it, and so I think the question is immaterial. The tariffs are in evidence and the classification shows, that it is already in evidence, that shafts and shafting other than this plain shafting which is specifically set out, is classified under the general classification of machinery, just as pulleys are, and things of that kind.

The COURT.—The objection is overruled.

Q. Are you acquainted with this firm here of Meese & Gottfried Company? A. Yes, sir.

(Testimony of George B. Gemmill.)

Q. Do they handle any such shafting as is in controversy here at all?    A. They do not.

Q. Does this catalog which has been identified here and offered in evidence as Plaintiff's Exhibit No. 13, relate to the shafting such as is in controversy in this case?    A. No, sir.

Q. Will you look at pages 64 to 70, inclusive, and see if [84—63] that answer is correct as to those.

Mr. WINDERS.—I will admit that it does not.

The WITNESS.—No, it has no reference to this shafting at all.

Q. (Mr. BRONSON.) Mr. Gemmill, what is the character of the work done on these forgings in this hogging process, as compared with finishing?

Mr. WINDERS.—I object to that as repetition.

Q. As done by yourselves.

The COURT.—The objection is overruled.

A. As done by ourselves?

Q. Yes.

A. As compared to the hogging process?

Q. Yes.

A. When the shaft is hogged on the hogging lathe at the forge shop, the rough surface is taken off, and when we have that done we have the forge people hold to within from  $1/8$  to  $3/16$  of the finished size, because the lathes on which they hog this shaft are not what are known as finishing lathes. If they attempted to finish the shaft on those lathes it might not be true to size, and if they went any closer than from  $1/8$  to  $3/16$  they might

(Testimony of George B. Gemmill.)

be—they might have it turned to 3/16 at one end and 1/8 at the other, and the 1/8 would not leave us sufficient metal to clean up the other end at our shop. For that reason we have them hold to within 1/8 to 3/16, and then we finish the shaft in our shop here. The finished dimensions must be within a few thousandths of an inch of the dimensions called for on the blue-print. In fact they are measured right down to micrometer dimensions.

[85—64]

Q. I think I asked you this morning whether or not those shafts are finished in any sense when they are rough turned in this way.

A. They are not. They are simply hogged out to develop whether there is any defects or not.

#### Cross-examination.

Q. (Mr. WINDERS.) Do these specifications correctly name the articles which were ordered; in other words, you wanted forged steel shafts rough turned and forged steel shafts rough turned ring forgings, line shafts.

Now, when these articles are put on the boat, what are they called—line shafts and tail shafts and thrusts?

A. We did not receive any thrust shafts.

Q. Well, what are they called? What do you call those when the boat comes and orders from you, what does he call them?

A. Well, he might call it a line shaft or he might call it line shafting, or he might call it a propeller shaft, or he might call it a tail shaft.

(Testimony of George B. Gemmill.)

Q. I notice that you use the word "shafts" here in these specifications.

A. Well, the term "shafts" is used, or the term "shafting" is used.

Q. Did you ever hear of a man wanting a tail shafting—or do you call it a tail shafting?

A. He might order one piece of tail shafting or he might order two pieces of tail shafting, or he might order two pieces of line shafting.

Q. You ordinarily call them shafts, don't you, and that is [86—65] the commonly accepted term?

A. Yes, they are referred to both as shafting and shafts.

Q. I did not ask you that. I asked you whether they were not ordinarily and commonly in the trade, by men handling them and by boat people, referred to as shafts.

A. Well, they are referred to as shafts.

Q. I said "ordinarily."

A. Well, they are referred to ordinarily as both shafting and shafts.

Q. Do you say that a man who orders a crank shaft, that he might come in and say "I want a crank shafting"?

A. Well, we don't get any crank shafts.

Q. I am asking you, sir—

Mr. BRONSON.—(Interposing.) If your Honor please, I object to that.

The COURT.—The objection is sustained.

Q. (Mr. WINDERS.) The fact is that, just as

(Testimony of George B. Gemmill.)

Mr. Matheson testified, as far as commercial shafting is concerned, or the ordinary shafting which you can buy on the market, it is such as is set forth in Meese & Gottfried's catalog, unless it is made to some special order?

A. Well, that is shafting used for one purpose, and this is shafting used for another purpose.

Q. You can't answer my question?

(Question repeated.)

A. Well, I can only answer that in one way, by saying that if a customer came in, we carry that same class of shafting—

Q. (Interposing.) You buy that in large quantities?

A. Yes, we buy it in carloads. We buy the other in carloads. [87—66] If a customer came in and ordered a piece of turned and polished shafting two inches in diameter, he might order one piece of shafting or he might order "one shaft,"—the same as line shafts. He might order one line shaft or he might order one piece of line shafting.

Q. Do you carry in stock these line shafts?

A. No, we do not.

Q. Does the manufacturer carry them in stock?

A. No.

Q. As a matter of fact, these shafts which you had made were all made in accordance with plans and specifications submitted? A. They were.

Q. And the shafting which you carry on hand for your ordinary trade is the ordinary straight

(Testimony of George B. Gemmill.)

shafting, such as is contained in that catalog, or of a similar character—Meese & Gottfried's?

A. Yes, sir, we carry that in stock.

Q. And if you want flanges or shafts or if you want them tapered down at the end, you had to put in a special order for that and have them made specially?

A. Well, the catalog pages which you referred to, all of those items are carried in stock, and if a party comes in—

Q. (Interposing.) I am asking you this question, sir, if a party were to come down to you or to any other house carrying ordinary shafting, and order a shaft with a flange drilled in it and made as a part of it, you would have to order that specially, would you not, and have it specially made?

A. No, they are carried in stock. [88—67]

Q. They are carried in stock with flanges made, a part of them?

A. The flange has to be fitted on to the shaft.

Q. I am not talking about where you fit them on, but I say when they are moulded into the shaft, an integral part of the shaft, and not attached by bolts or keys; but when you ask for a shaft and want the flange moulded in there, you have to order it especially, don't you?

Mr. BRONSON.—I will not object if counsel will concede my right to go into it on redirect examination, but he is not talking about ship shafting to this witness at all.

The COURT.—The objection is sustained.

(Testimony of George B. Gemmill.)

Mr. WINDERS.—On the ground that it has been covered by previous questions.

The COURT.—Well, I think it is covered.

Q. You have forgings for shafts sent out here without any work on them, don't you, in the rough?

A. No, we do not order forgings in the East sent out in the rough.

Q. You know that it is done by other concerns?

A. I don't know. The customary practice in ordering forgings in the East is to have them rough turned.

Q. They charge you for that rough turning, do they not?

A. They do; that charge is not over 2% or 3% of the cost of the shaft—it is less than—it is around a quarter of a cent a pound, or less.

The COURT.—Do I understand you to say that forgings are customarily turned to some extent?

The WITNESS.—It is customary when a manufacturer orders [89—68] forged shafts in the East to have them rough turned. In fact there are very few forge establishments which would want to enter an order on any other basis; because if the forging comes out here and a pipe or some other defect develops after it is turned then the forge shop has to replace the shafting F. O. B. Seattle, and when they take a rough ingot from the mill and start to forge that and machine it, very often the defects show up.

The COURT.—I understand that, but I simply ask you whether I understand your answer as being

(Testimony of George B. Gemmill.)

that forgings were customarily machined to some extent before they were shipped out.

The WITNESS.—Yes, sir; what is called—

The COURT.—There are forgings shipped out turned and machined?

The WITNESS.—I suppose there is.

Q. (Mr. WINDERS.) You heard Mr. Matheson say that he had done it and that it was done on this character of forgings, that some of them come out without any rough turning at all?

Mr. BRONSON.—I didn't understand him to say positively that any came out here.

Q. (Mr. WINDERS.) Now, you do get lots of forgings; just rough forgings for your other work, on which there is no machine work done at all?

A. Well, there is machine work done on any forging which you buy that is used in connection with machinery in any way.

Q. The forgings for the ends of the mast arms and so forth, do they have those machined in any way before they come out? [90—69]

A. I am not familiar with those forgings.

Q. It is not your intention to tell the Court that the great bulk of the forgings are worked on before they are shipped—that is taking the forgings as a whole?

- A. Oh, no. There is a class of forgings that might come out with just a rough hole in them, and probably, the surface would not be machined at all. But any forging that comes out and is used as a part of some machine would have to be machined

(Testimony of George B. Gemmill.)

here. We operate a large machine shop, and we buy a lot of forgings, and I have never bought any forgings in the East that did not have to be machined, and in that case we always ordered them rough turned or hogged at the forge shop.

Q. You always do that, order them rough turned—all kinds of forgings?

A. Yes, I cannot recall of any that we brought out in the rough.

Q. But do you know, as a matter of fact, that there is a very large quantity of forgings which are brought out here in the rough?

A. I do not question that.

Q. On the Pacific Coast—and you do not question that there is a great many forgings in the rough that are sent out with holes in them?

A. I suppose there are.

The COURT.—These holes that are drilled in rough forgings; is it customary that they are drilled exactly so that they are the size of the holes which will be ultimately used in the machine? Or is it simply something that is finished up later?  
[91—70]

A. Well, there are, probably, some forgings where they would have holes in them when they come out, where it would not have to be accurate; that is, it would not make any difference whether it was  $1/2$  or  $1/16$  or  $1/8$  or  $1/4$  of an inch. But we would not think of having the factories drill holes in those shafts, because they would have to

(Testimony of George B. Gemmill.)

be exactly in accordance with our blue-print dimensions to a thousandth of an inch.

The COURT.—Yes; but in the shaftings as a rule, the holes which are put in the rough forging, would it be customary when you are finishing the machine to ream those holes out further, or are they left to be put in when forged or after the forging, before you get them, exactly—what is the custom there?

The WITNESS.—Well, there are forgings made where you would have the forge-shop punch a hole in some part of it while they had it in the heated process and they could punch the metal out, and then you could ream it or bore it out to size on arrival here.

The COURT.—I asked you if that is the customary method of doing it in the finished machine?

The WITNESS.—No.

The COURT.—Then, so far as putting holes, the firm that is forging or furnishing the forged articles would put them there so that nothing more would have to be done with the holes. Would that be the rule?

The WITNESS.—I beg pardon?

The COURT.—Would it be the rule that where the holes are put in the forged article before shipment that they would be put in in such a way that nothing more [92—71] would have to be done with the holes, or is it the rule that they would have to be machined ultimately?

The WITNESS.—It would have to be machined

(Testimony of George B. Gemmill.)

ultimately if the balance of that same forging had to be machined.

The COURT.—That is all.

Q. (Mr. BRONSON.) As a matter of fact, with reference to this shafting of this kind, would the holes ever be drilled back at the forge shop?

A. No, we, or any other manufacturer handling shafting of this kind, would never have the forge-shop drill the holes, because that is the last operation. The shaft is completely finished all over and then the holes are drilled, because you have to have the holes check up to all the other dimensions on the shaft to micrometer sizes—they cannot vary a fraction of an inch.

Q. Did I understand you to say in answer to Mr. Winders that no forging which is to become a part of the machinery leaves the forge shop until it has been machined in some way to a certain extent?

A. That is the general practice among manufacturers who order any quantity of shafts or gears or pinions or anything like that that are forged in the East. It is customary to have them rough-turned or hogged at the forge shop, to show up any defects that might be there.

We have bought pinion blanks and gear blanks and we have had those hogged and rough turned at the forge shop.

(Witness excused.)

Here the defendant rests. [93—72]

**Testimony of A. C. Cade, for Plaintiff (In Rebuttal).**

A. C. CADE, produced as a witness on behalf of plaintiff in rebuttal, testifies as follows:

Q. (Mr WINDERS.) Mr. Cade, who is the Mr. Robinson who wrote this letter to you—I see this letter is written by F. W. Robinson (showing)?

A. At the time this letter was written, Mr. Robinson was chairman of what was known as the Portland District Freight Committee, the committee working under the Administration, as the road at that time was under Administration control.

Q. And Mr. Wittenberg was in your department?

A. My chief inspector, located in the City of Seattle.

Q. You note the term “such material is ‘Shafting or Machinery’ and should be rated accordingly”? A. I do.

Q. How are those words “Shafting or Machinery” used in the classification?

A. The term “Shafting” or what we call plain shafting is covered under the line of iron and steel articles—

Mr. BRONSON.—I object to this as not proper rebuttal, because Mr. Cade has testified as to all the definitions and meanings of the tariff.

The WITNESS (Continuing.) —the commodity outline under the item provides for shafting, plain, under the caption iron and steel, articles of, and it is associated with such articles as bar iron, rod

(Testimony of A. C. Cade.)

iron and so forth, in a group which the commodity tariff will show for itself.

The term "Shafting" is also used in the machinery grouping both in commodity tariffs and Western Classification. In the group articles in the classification, [94—73] commodity tariff, it is customary to provide for all of the machinery and parts which are used in connection with certain types of machinery and shafting, as transmission machinery used in connection with pulleys which transfers and transmits power for the engine you might use to the machine which is operated by power, and it is considered, and generally considered by all that I have discussed the question with, as transmission machinery, and that is the reason why Mr. Robinson, or Mr. Robinson's office used the term that such material, having reference to these rough turned forgings, is ratable as shafting or machinery, because the term shafting is used in the group in the machinery item of the Trans-Continental Freight Bureau Tariff. In other words, you could put in—

Mr. BRONSON (Interposing.) I think the witness has gone beyond the question.

The COURT.—The objection is sustained.

Q. (Mr. WINDERS.) Mr. Cade, you have been in foundries—those big foundries in the east where forgings are made?

A. I have; —I have been in some of the smaller shops, not the very large shops.

Q. Are you familiar with and have you examined

(Testimony of A. C. Cade.)

in your business personally forgings moving from the Atlantic Seaboard to the coast, of various kinds?    A. I have.

Q. Now, just tell the Court the character of forgings that do move in the rough without any finish.

Mr. BRONSON.—I object to that as not proper rebuttal. [95—74]

The COURT.—The objection is sustained.

Q. (Mr. WINDERS.) And have you in your work had considerable experience, and those working under you, in shipments of plain shafting and various shafts or shafting for boats?

A. I have.

Mr. BRONSON.—I object to that as not proper rebuttal.

The COURT.—The objection is sustained, unless you are leading up.

Mr. WINDERS.—I was going to ask this question:

Q. You heard Mr. Gemmill's testimony as to plain shafting which reads in this tariff in the commodity rates shown in this tariff on page 293—4-O, under the head "Iron and Steel, Articles of"; there are several heads "Bands, Bars, Bars, Corrugated or Twisted, Hoops, Rods, Shafting, Plain, and Slabs"; and under the head of Shafting, Plain, "See Note 1," where it says "Carload rates apply only on plain shafting without connections."

You, in your business of inspector of plain shafting, and in the inspection and making of rates on shafts such as used on boats, in all your experience

(Testimony of A. C. Cade.)

during all the years you have mentioned prior to the calling of this case for trial, did not know or hear of any classification ever made that put under this head of "plain shafting" such shafts as are referred to in these prints?

Mr. BRONSON.—I object to that.

Q. (Continuing.) Or of anyone contending prior to this trial or knew of any classification ever made or any request for any classification for shafts such as are shown on these drawings, to be placed under a classification of plain shafts, classified as iron and steel, articles of? [96—75]

Mr. BRONSON.—I object to that as not proper rebuttal, and the witness is not shown to be qualified to answer.

The COURT.—The objection is overruled.

The WITNESS.—In all of my experience in the inspection—

Mr. BRONSON.—I submit that question is susceptible of being answered "Yes" or "No."

The COURT.—That can be answered "Yes" or "No."

The WITNESS. (Continuing.)—I have never known of any such comparison being made.

#### Cross-examination.

Q. (Mr. BRONSON.) As a matter of fact, there had been no shipbuilding operations on this coast until this war took place, of any amount or character?

A. There is, in California territory there has

(Testimony of A. C. Cade.)

been considerable shipbuilding for many years past.

Q. Not up here where you have been familiar with—

A. Pardon me, but I was located in San Francisco twenty years. There has been very little in the north coast territory—there has been some.

Q. How long ago were you in San Francisco?

A. I was in San Francisco from the year 1889 up to the year 1909; since September 1909 I have been here.

Q. Were these classifications in force up to that time?

A. The classifications and commodity tariffs change.

Q. I am asking you whether or not these classifications here, or anything that can fairly be called approximating to them, were in force prior to that time? [97—76]

A. That is a very difficult question to answer.

Q. If you can't answer it, all right—how do they happen to put this new rate in?

A. In tariff 4-P?

Q. Yes.

A. At the request of the shipbuilding interests.

(Witness excused.)

The COURT.—Is there any further testimony?

(Whereupon the testimony is closed and the argument is set for Monday, January 15, 1923, at 2:00 P. M.) [98—77]

At the close of the testimony, and before the Court had entered its decision, the defendant tendered and requested the Court to make and find the following:

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[Title of Court and Cause.]

**Defendant's Proposed Findings of Fact.**

The above-named defendant on this — day of —, 1923, requested the Court, in addition to the first findings of fact made by the Court, as requested by the plaintiff, and to which findings of fact the defendant assents to find:

II.

That on the 3d day of March, 1919, there was delivered to a connecting carrier, as operated by the then Director-General of Railroads at Camden, New Jersey, by the Camden Forge Company, one car, to wit, P. R. R. 294966, loaded with eighty forgings or flanged shafts for distribution from Camden, New Jersey, to the defendant at Seattle, Washington, and which car was, thereafter, duly transported and delivered by the predecessor in office of the plaintiff, as operating the Northern Pacific Railroad, to the defendant, on the 8th day of April, 1919, and that there accrued thereon, in accordance with the duly published classifications and tariffs, duly filed with the Interstate Commerce Commission of the United States, as provided by law, said shipment moving in Interstate Commerce, charges, including the war tax thereon, in the sum of One Thousand One Hundred and Seventy-five and 15/100

(\$1,175.15) Dollars, which charges were [99] duly paid by the defendant.

### III.

The defendant further asks the Court to find that on the 10th day of March, 1919, there was delivered at Camden, New Jersey, by the same consignor, a second car loaded with twenty-one forgings or flanged shafts, loaded in car P. R. R. 294476 for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and that the said shipment was by the predecessor in office of the plaintiff, the then Director-General of Railroads operating the Northern Pacific Railway, delivered to the defendant at Seattle, Washington, on the 5th day of April, 1919; that under the classifications and tariffs duly filed with the Interstate Commerce Commission, as aforesaid, there accrued thereon freight charges, including the war tax thereon, in the sum of One Thousand Four Hundred and Two and 50/100 (\$1,402.50) Dollars, which charges were by the defendant paid.

### IV.

That on the 22d day of March, 1919, a third car loaded with fifty-one forgings or flanged shafts was consigned from Camden, New Jersey, by the consignor to the defendant at Seattle, Washington, being car #N. Y. C., 347714, which car was transported from Camden, New Jersey, in regular course and delivered to the defendant at Seattle, Washington, on the 25th day of April, 1919, the same being transported and delivered by the United States Railway Administration as operating the

Northern Pacific Railway, and that there accrued on account of such transportation charges, including the war tax thereon, in the sum of One Thousand Six Hundred and Twenty-three and 88/100 (\$1,623.88) Dollars, which charges were paid by the defendant.

## V.

That on the 9th day of April, 1919, there was delivered [100] to the then Director-General of Railroads, at Camden, New Jersey, a fourth car containing forgings or flanged shafts and other shafts of the same general character, being car B. & A. 10229, for transportation from Camden, New Jersey, to the defendant at Seattle, Washington, and which car was transported by the United States Railroad Administration operating the Northern Pacific Railway from Camden, New Jersey, to Seattle, Washington, and there delivered to the defendant, and that there accrued thereon freight charges, including the war tax thereon, in the sum of One Thousand Ninety-six and 70/100 (\$1,096.70) Dollars, which charges were paid by the defendant, and that all of the charges above set forth were paid by the defendant long prior to the bringing of this action.

## VI.

That the charges above set forth in the findings proposed by the defendant were the proper and lawful charges of said transportation and for the whole thereof, and were in accordance with the tariff provided therefor by the Interstate Commerce Commission, and that no other or further or larger

charges could be lawfully assessed therefor, and that said shipments and each of them consisted of shaftings, plain without connections, as classified in Transcontinental Freight Bureau, West-Bound Tariff No. 4-O, at page 293, being item No. 3450, filed as exhibit by the defendant in this case, the freight upon which should have been \$1.37½ per 100#, which was the amount paid by the defendant upon all of said shipments, which classification with the rate of \$1.37½ per 100# was in force and effect at the time when said shipments moved.

## VII.

That the defendant has paid to the plaintiff the just amount of the freight rates imposed, as aforesaid. [101]

Each and all of which findings the Court refuses to make, and to which refusal the defendant excepts, and which exception is allowed.

Dated at Seattle, Washington, this 30th day of January, 1923.

EDWARD E. CUSHMAN,  
Judge.

Filed January 30, 1923. [102]

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[Title of Court and Cause.]

### **Defendant's Proposed Conclusions of Law.**

The defendant requests that the Court, in accordance with the findings of fact proposed to find as a conclusion of law that the plaintiff is not entitled to any relief whatsoever in this action, and

that the defendant is entitled to be dismissed without day and to recover its costs herein.

Which conclusion of law the Court refuses to make, and to which refusal the defendant excepts and which exception is allowed.

Dated at Seattle, Washington, January 30th, 1923.

EDWARD E. CUSHMAN,  
Judge.

Filed January 30, 1923. [103]

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[Title of Court and Cause.]

**Defendant's Proposed Judgment.**

Whereupon the defendant requested the Court to enter judgment in favor of the defendant, dismissing this action with prejudice and with costs to the defendant, which motion the Court denies and to which defendant excepts and which exception is allowed.

Dated at Seattle, Washington, January 30, 1923.

EDWARD E. CUSHMAN,  
Judge.

Filed January 30, 1923. [104]

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[Title of Court and Cause.]

It is hereby ordered that the time for filing proposed bill of exceptions in the above-entitled case is hereby extended to the 1st day of March, 1923.

Dated at Seattle, Washington, this 9th day of February, 1923.

EDWARD E. CUSHMAN,  
Judge.

O. K.—C. H. WINDERS.

Filed Feb. 9, 1923.

Hereunto annexed are the findings of fact, conclusions of law and judgment which were duly signed and entered by the Court on the 19th day of March, 1923, together with the exceptions to said findings of fact, conclusions of law and judgment by the defendant and plaintiff in error which were duly allowed by the Court, together with all the exhibits mentioned in the foregoing transcript of the testimony offered and received upon the trial, and the said findings of fact, conclusions of law and judgment, and defendant's exceptions to said findings of fact, conclusions of law and judgment as allowed and entered, together with the said exhibits, are hereby, by reference thereto, made a part of this bill of exceptions, which is signed, settled and allowed by me.

Dated this 19th day of March, 1923.

EDWARD E. CUSHMAN,  
Judge. [105]

Due service of a copy hereof admitted this 27th day of February, 1923.

GEO. T. REID,  
& C. H. WINDERS,  
Attorneys for Plaintiff.

[Indorsed]: Lodged in the United States District Court, Western District of Washington, North-

ern Division. Feb. 27, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [106]

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[Title of Court and Cause.]

**Petition for Order Allowing Writ of Error.**

The said defendant, Puget Sound Machinery Depot, a corporation, feeling itself aggrieved by the judgment entered in said cause, on January 30th, 1923, in favor of said plaintiff and against said defendant, for Four Thousand Eight Hundred Sixty-one & 69/100 Dollars (\$4,861.69), and plaintiff's costs and disbursements, and in which judgment and the proceedings leading up to the same, certain errors were committed to the prejudice of this defendant, which more fully appears from the assignment of errors filed herewith, comes now and prays said Court for an order allowing the defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that the Court in said order fix the amount of security which the defendant shall give for the plaintiff's costs under a prosecution of said writ of error, and further, that a transcript of the record,

proceedings and papers in this cause duly authenticated may be sent to said Circuit Court of Appeals.

Dated this 26th day of April, 1923.

BRONSON, ROBINSON & JONES,  
Attorneys for Defendant. [107]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [108]

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[Title of Court and Cause.]

#### **Assignment of Errors.**

Now comes the defendant, Puget Sound Machinery Depot, a corporation, by its attorneys, Bronson, Robinson & Jones, and in connection with its petition for a writ of error makes the following assignment of errors which it avers occurred upon the trial of the cause, to wit:

##### **I.**

The Court erred in finding that, as to the shipment of March 3d, 1919, there accrued thereon charges in the sum of Two Thousand Twenty-eight Dollars and Thirty-five Cents (\$2,028.35), plus a war tax in the sum of Twenty-five Dollars and Sixty Cents (\$25.60) or any sum in excess of One Thousand One Hundred Seventy-five Dollars and Fifteen Cents (\$1,175.15); and in refusing to find as to said shipment of March 3d, 1919, that there accrued thereon the sum of One Thousand One Hundred Seventy-five Dollars and Fifteen Cents

(\$1,175.15) including the war tax applicable to such shipment, which sum was duly paid by the defendant.

## II.

The Court erred in finding, as to the shipment of March 10th, 1919, that there accrued thereon freight charges in the sum of Two Thousand Four Hundred Twenty-two Dollars and Fifty Cents (\$2,422.50), plus war tax in the sum of Thirty Dollars and Sixty Cents (\$30.60), or [109] any sum in excess of the sum of One Thousand Four Hundred Twenty-two Dollars and Fifty Cents (\$1,422.50) which included the war taxes properly applicable thereto; and in refusing to find as to said shipment of March 10th, 1919, that there accrued thereon freight charges including the war tax thereon, in the sum of One Thousand Four Hundred Two Dollars and Fifty Cents (\$1,402.50), which charges were by the defendant duly paid.

## III.

The Court erred in finding, as to the shipment of March 22d, 1919, that there accrued thereon freight charges in the sum of Two Thousand Eight Hundred Four Dollars and Eighty-eight Cents (\$2,804.88), plus war tax in the sum of Thirty-five Dollars and Forty-three Cents (\$35.43), or any sum in excess of One Thousand Six Hundred Twenty-three Dollars and Eighty-eight Cents (\$1,623.88) including the war taxes properly applicable thereto; and in refusing to find as to said shipment of the 22d day of March, 1919, that there accrued thereon, on account of transportation

charges, including the war tax thereon, the sum of One Thousand Six Hundred Twenty-three Dollars and Eighty-eight Cents (\$1,623.88), which charges were paid by the defendant.

#### IV.

The Court erred in finding as to the shipment of the 9th day of April, 1919, that there accrued thereon freight charges in the sum of One Thousand Eight Hundred Ninety-four Dollars and Thirty Cents (\$1,894.30), with war tax in the sum of Twenty-three Dollars and Ninety-three Cents (\$23.93), or in any other sum in excess of One Thousand Ninety-six Dollars and Seventy Cents (\$1,096.70), which said last mentioned sum included the war taxes properly applicable to said charges; and in refusing to find as to said shipment of April 9th, 1919, that there accrued thereon, freight charges, including the war taxes thereon, in the sum of One Thousand Ninety-six Dollars and Seventy Cents (\$1,096.70), which charges were paid by the defendant, [110] and that all of the sums referred to hereinabove, which the Court refused to find as the proper sums accruing on each particular shipment, were paid by the defendant long prior to the bringing of this action.

#### V.

The Court erred in finding that the sums designated as charges, which were by it found to have accrued respectively on said above-mentioned shipments, and covering the transportation of the four cars in which the said shipments were laden, were

assessed in accordance with the duly filed and published classifications and tariffs governing the transportation of each of said cars from Camden, New Jersey, to Seattle, Washington, as shown by the tariffs and classifications as duly filed with the Interstate Commerce Commission, and then in effect; and the Court further erred in finding that said shipment consisted of flanged shafts roughly machine turned, properly classified as shafts or shafting, iron or steel, other than crank shafts, without cams, couplings or fittings, and not key-leaved or key-seated, as shown by the items four, seven and nine, page 301 of Western Classification No. 55; and the Court further erred in finding that said shafts were covered by Transcontinental Freight Bureau West-Bound Tariff No. 4-0, I. C. C. No. 1049, of R. H. Countiss, Agent, with supplements thereto; and the Court further erred in finding that said shipments were covered by the fifth class rate as designated in said classification; and further erred in finding that said classification which applied to said shipment was Two Dollars and Thirty-seven and one-half Cents (\$2.37½) per hundred pounds; and further erred in finding that said classification made by the Transcontinental Freight Bureau was a correct classification.

## VI.

The Court further erred in refusing to find that the charges of Eleven Hundred Seventy-five Dollars and Fifteen Cents (\$1175.15), [111] Fourteen Hundred Twenty-two Dollars and Fifty Cents (\$1422.50), Sixteen Hundred Twenty-three and

Eighty-eight Cents (\$1623.88), and One Thousand Ninety-six Dollars and Seventy Cents (\$1,096.70), as applicable to the shipments of March 3d, March 10th, March 22d, and April 9th, 1919, respectively, were the proper and lawful charges of said transportation, and for the whole thereof, and were in accordance with the tariff provided therefor by the Interstate Commerce Commission, and that no other or further or larger charges could be lawfully assessed therefor, and that such shipments and each of them consisted of shaftings, plain without connections, as classified in Transcontinental Freight Bureau West-Bound Tariff No. 4-O, at page 293, being item No. 3450, filed as exhibit by the defendant in this case, and that the freight upon said shipment should have been at the rate of One Dollar and Thirty-seven and One-half Cents (\$1.37 $\frac{1}{2}$ ) per one hundred pounds, which was the amount paid by the defendant upon all of said shipments, and that said classification with the rate of One Dollar Thirty-seven and One-half Cents (\$1.37 $\frac{1}{2}$ ) per one hundred pounds, was in force and effect at the time when said shipments moved.

### VII.

The Court erred in finding that there was due and owing to the plaintiff from the defendant the sum of Three Thousand Nine Hundred Sixty-seven Dollars and Thirty-six Cents (\$3,967.36), with interest on the portions thereof from the respective dates of the delivery of said shipments.

### VIII.

The Court erred in refusing to find that defend-

ant had paid to the plaintiff prior to the institution of this action the full and just amount of the proper freight charges covering said four shipments.

### IX.

The Court erred in making and entering conclusions or law to the effect that the plaintiff is entitled to a judgment against [112] the defendant in the sum of Three Thousand Nine Hundred Sixty-seven Dollars and Thirty-six Cents (\$3,967.36), with interest, or that the plaintiff is entitled to judgment in any sum of money whatsoever, and the Court further erred in concluding that the plaintiff is entitled to its costs and disbursements in this action.

### X.

The Court erred in refusing to find as a conclusion of law from the findings of fact as proposed by the defendant that the plaintiff is not entitled to any relief whatsoever in this action, and that the defendant is entitled to be dismissed without day and to recover its costs herein.

### XI.

The Court erred in finding and entering judgment in favor of the plaintiff and against the defendant in the sum of Four Thousand Eight Hundred Sixty-one Dollars and Sixty-nine Cents (\$4,861.69), together with his costs and disbursements herein.

### XII.

That the Court further erred in denying defendant's motion for judgment in accordance with its

proposed findings of fact and conclusions of law in favor of the defendant, dismissing this action with prejudice and with costs to the defendant.

WHEREFORE, the defendant prays that the said judgment be reversed, and the District Court directed to dismiss the said action as prayed in the answer herein.

BRONSON, ROBINSON & JONES,  
Attorneys for Defendant.

Received a copy of the foregoing assignments of error this 20th day of June, 1923.

C. H. WINDERS,  
Attorney for Plaintiff. [113]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [114]

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[Title of Court and Cause.]

**Order Granting Writ of Error, and Fixing Amount of Bond.**

This cause coming on to be heard in the court-room of said court in the city of Seattle, Washington, upon the petition of the defendant, Puget Sound Machinery Depot, a corporation, praying the allowance of a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors also filed in due time, and also praying that a transcript of the record duly authenticated may be sent to

said court in order that said alleged errors may be examined.

The Court having duly considered the same, does hereby allow the writ of error and grants the several prayers of said petition on the condition that the defendant furnish a good and sufficient surety bond, to secure plaintiff's costs in the sum of Two Hundred Fifty & no/100 Dollars (\$250.00).

Dated this 22d day of June, 1923.

EDWARD E. CUSHMAN,  
Judge.

Received a copy of foregoing order this 20th day of June, 1923.

C. H. WINDERS,  
Attorney for Plaintiff. [115]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [116]

#### **Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, That we, Puget Sound Machinery Depot, a corporation, as Principal, and the Southern Surety Company, a corporation of the State of Iowa, as Surety, are held and firmly bound unto the defendant in error, James C. Davis, Director-General of Railroads of the United States, and agent of the United States under the Transportation Act, 1920, providing for the termination of Federal control of Railroads, in the full and just sum of Two Hundred Fifty and no/100 Dollars (\$250.00) to be

paid to the said defendant, James C. Davis, etc., his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 25th day of June, in the year of our Lord one thousand nine hundred and twenty-three.

WHEREAS, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in said court, between James C. Davis, Director-General of Railroads of the United States, and Agent of the United States under the Transportation Act, 1920, providing for the termination of Federal Control of Railroads, plaintiff, and Puget Sound Machinery Depot, a Corporation, defendant, a judgment was rendered against the said Puget Sound Machinery Depot and the said Puget Sound Machinery Depot having obtained a writ of error and filed a copy thereof in the Clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James C. Davis, etc., citing and [117] admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco in said Circuit Court on the — day of July, 1923.

NOW, the condition of the above obligation is such, that if the said Puget Sound Machinery Depot shall prosecute said writ of error to effect

and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

PUGET SOUND MACHINERY DEPOT,  
[Corporate Seal] By GEO. B. GEMMILL,  
Secy.

SOUTHERN SURETY COMPANY,  
[Corporate Seal] M. REESE,  
Attorney in Fact.

Sealed and delivered in presence of

J. L. MERRITT.  
C. McWILLIAMS.

Approved this 28th day of June, 1923.

EDWARD E. CUSHMAN,  
Judge.

Due service of a copy hereof admitted this 27th day of June, 1923.

GEO. T. REID and  
C. H. WINDERS,  
Attorneys for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [118]

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[Title of Court and Cause.]

**Stipulation Re Printing Transcript.**

To avoid unnecessary repetition and expense, it is hereby stipulated that in printing transcript of record in the above-entitled cause there shall be

omitted from the pleadings, orders and other papers (other than the complaint, answer and judgment) the title of the court and the number and title of the cause.

Dated this 22d day of June, 1923.

C. H. WINDERS,

Attorney for Plaintiff.

BRONSON, ROBINSON & JONES,

Attorneys for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [119]

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[Title of Court and Cause.]

**Stipulation Re Original Exhibits.**

It is hereby stipulated, subject to the order of the Court, that the clerk of this court, in making up his return to the writ of error herein, shall include herein and as a part thereof the originals instead of copies of the following matters heretofore attached to and by order of the Court made a part of the bill of exceptions;

Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, and

Defendant's Exhibit "A-1."

Dated this 22d day of June, 1923.

C. H. WINDERS,

Attorney for Plaintiff.

BRONSON, ROBINSON & JONES,

Attorneys for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [120]

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[Title of Court and Cause.]

**Order for Sending Up Original Exhibits.**

Pursuant to written stipulation of the parties this day made and filed, and it being the opinion of the Court that such procedure is desirable and proper,

IT IS, THEREFORE, ORDERED that the clerk of this court shall, in making up his return to the writ of error in this cause, send to the United States Circuit Court of Appeals for the 9th District the original exhibits in said stipulation mentioned.

Done in open court this 22d day of June, 1923.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 22, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [121]

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**Order Extending Time to and Including August 15, 1923, to File Record and Docket Cause.**

For good cause shown, it is hereby ordered that the time for filing transcript of record in the above-entitled action in the United States Circuit Court

of Appeals for the Ninth Circuit be and the same is hereby extended to the 15th day of August, 1923.

Done in open court this 28th day of July, 1923.

JEREMIAH NETERER,  
Judge.

O. K.—C. H. WINDERS,  
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 28, 1923. F: M. Harshberger, Clerk. [122]

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#### **Praecept for Transcript of Record.**

To the Clerk of the Above-entitled Court:

Will you very kindly prepare a transcript of record in the above-entitled cause, and forward the same to the Clerk of the United States Circuit Court of Appeals for the Ninth District, in due course, the said transcript to consist of the following papers.

1. Complaint.
2. Answer.
3. Plaintiff's Exhibits 1 to 13, inclusive.
4. Defendant's Exhibit "A-1."
5. Stipulation waiving jury trial.
6. Findings of fact and conclusions of law and
7. Judgment and exceptions thereto.
8. Defendant's proposed findings, conclusions and judgment.

9. Order extending time for proposed bill of exceptions.
10. Notice of application to have bill of exceptions certified.
11. Order settling bill of exceptions.
12. Bill of exceptions as settled.
13. Assignment of errors.
14. Petition and order allowing writ of error.
15. Writ of error.
16. Citation.
17. Stipulation as to printing matter.
18. Stipulation and order for sending up original exhibits.
19. Bond on writ of error.
20. This praecipe.

Dated this 28th day of June, 1923.

BRONSON, ROBINSON & JONES,  
Attorneys for Defendant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [123]

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[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to Transcript of Record.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Wash-

ington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 123, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges, incurred and paid in my office on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the [124] above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 310 folios at 15¢ .....	\$46.50
Certificate of Clerk to transcript of record, 4 folios at 15¢ .....	.60
Seal to said certificate .....	.20
Certificate of Clerk to original exhibits, 3 folios at 15¢ .....	.45
Seal to said certificates .....	.20

I hereby certify that the above costs for preparing and certifying record, amounting to \$47.95,

have been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and here-with transmit the original writ of error and the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 3d day of August, 1923.

[Seal] F. M. HARSHBERGER,  
Clerk United States District Court, Western Dis-trict of Washington. [125]

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In the District Court of the United States for the Western District of Washington, Northern Division.

No. —.

JAMES C. DAVIS, Director-General of Railroads of the United States, and Agent of the United States Under the Transportation Act, 1920, Providing for the Termination of Federal Control of Railroads,

Plaintiff,

vs.

PUGET SOUND MACHINERY DEPOT, a Corporation,

Defendant.

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Judges of the District Court of the United  
States for the Western District of Washing-  
ton, Northern Division, GREETING:

Because in the record and proceedings, as also  
in the rendition of the judgment of the plea which  
is in the said District Court before you, or some  
of you, between James C. Davis, Director-General  
of Railroads of the United States, and Agent of  
the United States under the Transportation Act,  
1920, providing for the termination of Federal  
control of Railroads, plaintiff, and Puget Sound  
Machinery Depot, a corporation, defendant, a mani-  
fest error hath happened, to the great damage of  
the said Puget Sound Machinery Depot, a corpora-  
tion, as is, said and appears by the complaint, we  
being willing that such error, if any hath been,  
should be duly corrected and full and speedy jus-  
tice done to the party aforesaid, in this behalf, do  
command you, if any judgment be therein given,  
that then, under your seal, distinctly and openly,  
you send the record and proceedings aforesaid,  
with all things concerning the same, to the Justice  
of the United States Circuit Court of Appeals for  
the Ninth Circuit, at the courtrooms of said court  
in the city of San Francisco, in the State of Cali-  
fornia, together with this writ, so [126] that you  
have the same at the said place before the justice  
aforesaid, within thirty days from date, that the

record and proceedings aforesaid being inspected, the said justice of the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 28th day of June, in the year of our Lord one thousand nine hundred and twenty-three, and of the Independence of the United States the one hundred and forty-seventh.

[Seal] F. M. HARSHBERGER,  
Clerk of the said District Court of the United States, for the Western District of Washington.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,  
United States District Judge, for the Western District of Washington. [127]

[Endorsed]: No. —. In the District Court of the United States for the Western District of Washington, Northern Division. Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 28, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [127a]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. —.

JAMES C. DAVIS, Director-General of Railroads of the United States, and Agent of the United States Under the Transportation Act, 1920, Providing for the Termination of Federal Control of Railroads,

Plaintiff,

vs.

PUGET SOUND MACHINERY DEPOT, a Corporation,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

To James C. Davis, Director-General of Railroads of the United States, and Agent of the United States under the Transportation Act, 1920, providing for the termination of Federal control of Railroads, GREETING:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in the city of San Francisco, State of California, within thirty days from date, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division,

wherein you are defendant in error and Puget Sound Machinery Depot is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the 28th day of June, 1923.

[Seal] EDWARD E. CUSHMAN,  
United States District Judge, for the Western Dis-  
trict of Washington.

Attest: F. M. HARSHBERGER,  
Clerk of said United States District Court for the  
Western District of Washington.

Due service of a copy hereof admitted this 28th  
day of June, 1923.

GEO. T. REID and  
C. H. WINDERS,  
Attorneys for Plaintiff. [128]

[Endorsed]: No. —. In the District Court  
of the United States for the Western District of  
Washington, Northern Division. Filed in the  
United States District Court, Western District of  
Washington, Northern Division. Jun. 28, 1923.  
F. M. Harshberger, Clerk. By S. E. Leitch,  
Deputy.

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[Endorsed]: No. 4073. United States Circuit

[Endorsed]: No. 4073. United States Circuit  
Sound Machinery Depot, a Corporation, Plaintiff  
in Error, vs. James C. Davis, Director-General of  
Railroads of the United States, and Agent of the

United States, Under the Transportation Act, 1920,  
Providing for the Termination of Federal Control  
of Railroads, Defendant in Error. Transcript of  
Record. Upon Writ of Error to the United States  
District Court of the Western District of Wash-  
ington, Northern Division.

Filed August 6, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.